

SEPARATING RHETORIC FROM REALITY: A POLITICAL AND STATISTICAL LOOK AT FEDERAL JUDICIAL CONFIRMATION DELAYS

By:

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I. Introduction

Just prior to the Republican Party's sweeping electoral victory in November 2002, President George W. Bush suggested a new method for handling judicial appointments to address the problem of confirmation delay in the U.S. Senate.² President Bush, in his proposal, suggested that district and circuit court judges would notify the president of their intention to retire at least one year in advance.³ The president would then submit a nomination within 180 days of receiving notice of the vacancy.⁴ The Senate Judiciary Committee would have 90 days from submission to conduct a hearing, and the full Senate would vote on each nominee within 180 days of submission.⁵ President Bush's stated intent was to "fix, on a permanent and bipartisan basis, a judicial confirmation process

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² David Stout, *President Offers Plan to Expedite Judicial Confirmations*, N.Y. Times, available at <http://www.nytimes.com/2002/10/30/national/30CND-JUDG.html>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

that is clearly broken.”⁶ Ironically, even the President’s intent was called into question by Senator Patrick J. Leahy, then-Chairman of the Senate Judiciary Committee, who complained that the proposal itself sought to “politicize” the judicial selection process to “create a partisan campaign issue” in the imminent November 2002 elections.⁷

Over the last several years, individuals receiving appointments to the federal judiciary have experienced significant delays in confirmation proceedings.⁸ These confirmation proceeding delays have led many commentators to criticize the United States Senate on its inefficiency in the judicial confirmation process.⁹ Even more significantly, these delays led former Chief Justice William H. Rehnquist, in a report on the state of the judiciary in 1998, to rebuke the United States Senate for its “serious delays in the appointment process”.¹⁰

The root of the current confirmation delay crisis lies in a series of political skirmishes over judicial appointments that occurred in the early 1980’s when President Ronald Reagan nominated a number of conservative judges to the bench.¹¹ At that time, liberal advocacy groups persuaded Senate Democrats to scrutinize, and even block, the nominations of conservative judges.¹²

This phenomenon occurred frequently in the late-1980’s and early-1990’s, as Senate Democrats utilized these tactics to reject the nomination of Robert Bork to the

⁶ *Id.*, quoting a White House statement announcing the proposal.

⁷ *Id.*, quoting a letter written by Senator Leahy to President Bush.

⁸ See, e.g., Abner J. Mikva, *Election Year or Not, The U.S. Senate Too Often Blocks Judicial Nominees For Partisan or Petty Reasons*, February 28, 2000, 23 Legal Times 70 (2000).

⁹ See, e.g., *id.*

¹⁰ *Rehnquist scolds GOP for delay on judges; Vacancies threaten ‘quality of justice’*, BALTIMORE SUN, January 1, 1998.

¹¹ *Id.*

¹² *Id.*

Supreme Court and to threaten the nomination of now-confirmed Supreme Court Justice Clarence Thomas. The trend of blocking federal court nominations continued throughout the 1990's; however, instead of Senate Democrats blocking the nominations, it was Senate Republicans, whom had taken control of the Senate, that blocked the nomination of a number of liberal judicial appointments submitted by the Clinton White House.¹³

The delays in the confirmation process during the 1980's and 1990's had, according to a 1998 report issued by Chief Justice Rehnquist, taken a toll on the federal judiciary as these delays were adversely affecting the quality of justice.¹⁴ He noted in his report that one out of ten federal judgeships were vacant, with 26 posts being vacant for more than eighteen months.¹⁵

Since Justice Rehnquist issued his report, judicial confirmation process delays have continued. Indeed, Senate Democrats, who regained control of the Senate in the spring of 2001, have delayed a number of President George W. Bush's judicial nominations.

This article explores the process that has been established by Congress to confirm judicial nominees, denotes the reasons for delays in current confirmation proceedings, and offers a statistical analysis of demographic or political factors that affect the number of days required to confirm a judicial nominee.

First, this article in Section II examines the process by which Congress confirms judicial nominees. This section also discusses the varying delays that have arisen in judicial confirmation proceedings. Second, this article in Sections III, IV, and V

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

statistically evaluates judicial appointments. Section III of this article analyzes 614 district court appointments made between 1985 and 2000. Section IV looks at 362 circuit court appointments since from 1961 to 2000. Last, Section V examines all 110 Supreme Court appointments between 1789 and 2000.¹⁶

II. Appointing and Confirming Judicial Nominations

This section surveys the history of the appointments process, and its evolution into a tenacious political battle ground over the last twenty years. This section provides an in-depth analysis of the political wrangling that faced former Presidents Ronald Reagan, George H.W. Bush, and Bill Clinton, as well as the early politicking that impacted President George W. Bush's consideration of judicial appointments.

A. The History of the Appointments Process

The United States Constitution provides that the President shall have the power to nominate district court judges, circuit court judges, and Supreme Court Justices.¹⁷ The Constitution also provides that the Senate shall have the right to both advise the President on judicial choices and to consent to the President's ultimate judicial nominations.¹⁸ However, the question that always seems to exist is: how much power should each side have?

On one hand, Alexander Hamilton opined in The Federalist No. 66 that "[t]here will, of course, be no exertion of CHOICE on the part of the Senate."¹⁹ On the other

¹⁶ Sections III, IV, and V analyze data through December 2000 at the close of Bill Clinton's second term as President.

¹⁷ U.S. Const. Art. III.

¹⁸ *Id.*

¹⁹ Evan P. Schultz, *The Case For Mudslinging: Who Says It's Bad To Insult Nominees For The Bench?*, January 21, 2002, 25 Legal Times 58 (2002).

hand, during the nation's first 100 years, the U.S. Senate exercised its consent powers politically and rejected one quarter of the Presidents' choices for the Supreme Court.²⁰

Accordingly, with the United States Senate willing to assert its will, the President's appointment power rests largely on his ability to negotiate.²¹ Presidents, with few exceptions,²² have generally delegated their negotiating powers to various high-level government officials.²³

Presidents and their high-level judicial appointments teams' negotiating powers rely on their ability to bargain with members of Congress. Indeed, as one commentator has noted:

To get their way, presidents have to negotiate with ostensible allies, with the result that presidents have far less power to see their will done than might be supposed. The mechanics of the appointment process have some affect on the ultimate decision to appoint, but not much. In most cases, presidents get what they want only to the extent that they are willing to accommodate the interests of a state's senators . . . FDR, at one end of the spectrum, would negotiate with senators and party. Eisenhower, at the other, would not, leaving the Justice Department to protect his interests.²⁴

²⁰ *Id.* This included one of George Washington's nominees for chief justice.

²¹ *Id.*

²² For instance, President Franklin Roosevelt understood the appointments process and was exceptionally involved, even in the negotiation process. Sheldon Goldman, *Picking Federal Judges* 15-64 (1997).

²³ As one commentator has noted, Presidents Truman through Reagan all delegated their judicial appointment powers. *Id.* at 1-14. Specifically, the commentator noted:

Harry Truman delegated the appointment chore, interjecting himself only occasionally. Dwight Eisenhower was even further removed from the process, having given it over to his attorney general. As his administrations wore on, however, he wanted to be more involved in the process and asked his staff to prepare memorandums to explain how it worked. But he never felt comfortable enough to exert authority. John Kennedy and Lyndon Johnson, treated as one extended administration here, delegated the process to their attorneys general, although each was interested in stepping in when the need arose to secure particular appointments. Richard Nixon, Gerald Ford, Jimmy Carter, and [Ronald] Reagan followed the pattern of delegation and general lack of micro-management.

²⁴ *Id.* A key to any nominee's success in the process is the strength of his or her political connections.

If a President does not want to negotiate with members of the Senate, the Senate may then thwart the nomination in any number of ways. Particularly, either the judiciary committee or the full Senate may reject the appointment by vote.

However, there are other ways in which the Senate can ensure that a judicial selection is not confirmed. A U.S. Senator, whether from the President's party or not, may effectively block a nominee in two ways.²⁵ First, the U.S. Senator can issue a secret "hold" on a potential appointment.²⁶ This "hold" operates to indefinitely block the nominee's confirmation vote.²⁷ The U.S. Senator issuing the "hold" could, until recently, remain anonymous.²⁸ Second, the nominee's home-state U.S. Senator could fail to sign off on the "blue slip".²⁹ Before a nomination can proceed, both state Senators must sign a "blue slip", and if they do not, then the nomination will never receive a vote in the judiciary committee.³⁰ These delays are typically avoided if both senators from a state agree on a nominee.³¹

Interestingly enough, over the years, the main hurdle in the appointments process has not involved getting an appointee past the Senate Judiciary Committee and obtaining the vote of the full Senate.³² Rather, confirmation problems have been the result of either

²⁵ Mikva, *supra* note 9, at 70.

²⁶ *Id.* at 70. Abner Mikva was a member of the U.S. House of Representatives in the 1960s and 1970s. He received an appointment to the D.C. Circuit from President Jimmy Carter in 1979. He served as Clinton's White House Counsel from 1994-95.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Goldman, *supra* note 23, at 1-14.

the appointees' home state Senators placing a "hold" on the nominee or failing to sign off on a "blue slip".³³

One commentator, who has written extensively on this subject, summarized the negotiating process from a historical perspective as follows:

The tension is always between the president's goals and the senators' goals. The president has the best chance to put his own person on the bench when the nominee's state has no senators of the president's party. The appointment power carries with it no obligation to defer to the other party's senators, and, not surprisingly, presidents rarely consider the opposition's interests. Federal judgeships are the biggest political prizes and must be handed out to secure the greatest advantage. Senators from the president's own party, representing their particular state party organization, want to see their own people benefited, and they exercise whatever leverage they can to do so. The power that the senators can exercise in the appointment process, especially if they sit on the Judiciary Committee, can lead to a stillborn nomination or even a defeated one.³⁴

B. The Appointments Process Over The Last Twenty Years

The dynamics of the appointments process has changed dramatically over the last twenty years. As one commentator noted, the Senate has begun to use:

different justifications and techniques to block or at least slow down the president's capacity to fill judicial vacancies. Some attribute these partisan tactics to the 1987 "Borking" of President Reagan's nomination of Robert Bork to the Supreme Court. While the failed confirmation of Judge Bork (and the barely successful confirmation of Justice Clarence Thomas) were dramatic examples of Senate partisanship, the problems usually were confined to Supreme Court appointments.³⁵

Indeed, in the late 1980s and early 1990s, the Democratic controlled Senate, with the help of liberal special interest groups, began stalling and delaying the confirmation of a

³³ *Id.*

³⁴ *Id.*

³⁵ Mikva, *supra* note 9, at 70. However, it should be noted, with regard to confirming Supreme Court Justices, that "[p]residents have had trouble with those ever since George Washington lost two of his early nominations to the Court because the Senate was irritated at the administration about some treaty." *Id.*

number of Republican Presidents Ronald Reagan and George H.W. Bush's conservative nominations to the federal courts.

1. The Clinton White House

In the first two years of the Clinton administration, Democrats controlled both branches of Congress and the White House. During this time, the Clinton White House appointed 129 judges.³⁶ In 1994, the Republicans gained control of Congress, and they began engaging in stall and delay tactics whenever the Clinton White House presented them with liberal judicial appointments.³⁷

The Clinton White House and Senate Republicans struggled at first over the confirmation process. Ultimately, the White House withdrew nine of its liberal nominations in the face of ardent opposition,³⁸ and over the next two years, Republicans confirmed 73 of Clinton's judicial nominations.³⁹

In a 1996 speech, U.S. Senator Orrin Hatch (R-Utah), then chairman of the judiciary committee, explained and defended the Republican Congress' desire to thwart the appointment of liberal judges.⁴⁰ Senator Hatch stated:

Now I am not saying that the Senate can or should use its advise and consent power to block all judicial appointees whose political views I do not agree with, to stop every nominee because a Republican president would not have made the same appointment, or because we want revenge for what happened to nominations proposed by Republican presidents. As chairman of the Senate Judiciary Committee during the past Congress, I

³⁶ Jonathan Ringel, *GOP Senators Ready To Enter The Judge Game: Bush In The White House Empowers Law Makers On Bench Recommendations*, January 22, 2001, 24 Legal Times 6 (2001). Throughout the Clinton years, 374 judges were appointed, and of those, 1/3 were appointed in his first two years in office. *Id.*

³⁷ Rehnquist scolds GOP for delay on judges, *supra* note 11.

³⁸ Schultz, *supra* note 20, at 58.

³⁹ U.S. Senator Orrin Hatch, *Hatch Fires Warning Shot On Judges*, November 18, 1996, 19 Legal Times 14 (1996).

⁴⁰ *Id.*

sought to steer the nomination process in a way that kept it a fair and principled one, and I still plan to conduct a fair confirmation process. But conducting a fair confirmation process most assuredly does not mean granting the president carte blanche in filling the federal judiciary. It is as simple as this: Those nominees who are or will be judicial activists should not be nominated by the President or confirmed by the Senate, and I will do my best to see to it that they are not. Now, the president's liberal constituency is chomping at the bit for President Clinton during his second term to pack the courts with liberal judicial activists. I urge the president to resist that call.⁴¹

By and large, the Clinton White House, during its second term, heeded Senator Hatch's advice and steered away from nominating inordinate numbers of liberal judges.

During the first three years of the Clinton White House's second term, a vast majority of judicial nominations were confirmed. However, the process was exceptionally political. The Clinton White House encountered substantial politicking from both Democrats and Republicans. Accordingly, some judicial nominations failed because the President and Senators could not come to terms via horse-trading on certain items.⁴²

At other times, judicial nominations failed simply because a Senator blocked the nomination. For instance, one Senator placed a personal hold on a nominee to the District Court of his state simply because the nominee had voted for Clinton.⁴³ The nominee was well regarded with the state bar and with a Republican senator.⁴⁴ In another instance, a Senator refused to approve a nominee because of a discovery dispute he had suffered with the nominee while they were both practicing lawyers.⁴⁵

⁴¹ *Id.*

⁴² Ringel, *supra* note 37, at 6.

⁴³ Mikva, *supra* note 9, at 70.

⁴⁴ *Id.*

⁴⁵ *Id.*

Finally, some nominees failed to receive confirmation votes because of blunders made by the Clinton administration. For instance, Senator Spencer Abraham (R-Mich.) held up Helene White's nomination to the 6th Circuit for 42 months because the White House failed to consult him prior to White's nomination, and because of dissonance between himself and Michigan's other U.S. Senator Carl Levin (D-Mich.).⁴⁶

The Clinton administration might have avoided these problems by consulting with Senator Abraham, and by acting as a broker between Senators Abraham and Levin. The Clinton administration could have suggested that the Senators agree to a selection process similar to that of Senators Daniel Patrick Moynihan (D-N.Y.) and Alfonse D'Amato (R-N.Y.). These senators, though of different parties, had agreed on a successful division of nomination powers that worked during Republican and Democratic administrations.⁴⁷

However, despite politicking and Senatorial holds, the Senate confirmed the vast majority of Clinton's judicial nominees. Indeed, entering into the last year of his Presidency, only 37 of Clinton's federal bench nominees awaited confirmation, with only a few nominees having waited more than a year.⁴⁸

2. Transitioning From The Clinton White House To The George W. Bush White House: Fall 2000 – Spring 2001

⁴⁶ *Id.*

⁴⁷ Mikva, *supra* note 9, at 70. Many senators, though of different parties, have worked out successful divisions of nomination powers. For instance, Senators Bob Graham (D-Fla.) and Connie Mack (R-Fla.) successfully won the confirmation of six judges in 2000. Ringel, *supra* note 49, at 1. Even when Senators are of the same party, they may consult with the other party. For instance, in Arizona where both Senators are Republican, Senator Jon Kyl (R-AZ), a member of the judiciary committee, negotiates with the state's only Democrat, Rep. Ed Pastor (D-AZ), and jointly recommends judicial candidates to the White House. This cooperation, in light of a Democratic White House, worked well as all three of their 2000 nominations - Susan Ritchie Bolton, Mary Helen Murguia, and James Teilborg - were confirmed within days of their nominations.

⁴⁸ *Id.* It is interesting to note that the judicial nominees whom have been waiting the longest are the least likely to receive confirmation. Jonathan Ringel, *Stay Tuned: End Game On Judge Nears*, August 7, 2000, 23 Legal Times 1 (2000). For example, 11 of the last 12 judges approved by the Senate went from nomination to confirmation in under three months - this included three district court candidates from Arizona whom were voted out of the Senate Judiciary Committee just six days after they were nominated.

a. Clinton's Lame Duck Appointments

In the last year of the Clinton administration, the appointments process teetered along much the same as it had during the preceding three years, with one historically notable exception – Clinton continued to make judicial appointments during the fall election cycle. Typically, during an election cycle, the Senate will not confirm judicial appointments. This long-standing informal practice was formalized in June of 1960 when then-Majority Leader Lyndon Johnson sent a letter to President Dwight D. Eisenhower informing him that the Senate would not confirm any more federal judges until after the November election.⁴⁹ In so stating, Johnson reasoned that it would be improper for the president to appoint any “midnight” judges.⁵⁰

The LBJ letter has been followed over the years and, in that tradition, the 2000 Republican Senate completed its confirmation proceedings in July of 2000. However, the Clinton White House failed to observe tradition and unilaterally decided to make more judicial appointments just prior to Election Day.⁵¹

Admittedly, the LBJ letter has not served as an automatic block to federal judicial appointments. Indeed, some appointments have occurred in rare circumstances when both parties have agreed and supported an appointment. For instance, current Supreme Court Justice Stephen Breyer, who was nominated by President Jimmy Carter to the U.S. Court of Appeals for the First Circuit prior to the November 1980 election, was confirmed after the election.⁵² In this instance, Breyer, who had served as chief counsel

⁴⁹ Mikva, *supra* note 9, at 70.

⁵⁰ *Id.*

⁵¹ Jonathan Groner, *Bush May Need to Show Restraint In Judge Picks: Even Split In Senate, Modest Mean Conservative Court May Face Confirmation Battles*, November 13, 2000, 23 Legal Times 9 (2000).

⁵² *Id.*

to the Judiciary Committee, had the support of the chairman of the Senate Judiciary Committee, Sen. Ted Kennedy (D-Mass), and the ranking minority member, Sen. Strom Thurmond (R-S.C.).⁵³

However, under most circumstances, judicial “midnight appointments” are not made, and the Clinton White House failed to observe this tradition by making appointments prior to the election. Additionally, after the election, the Clinton White House continued to make appointments (known as recess appointments), including the nomination of Richmond attorney Roger Gregory to the Fourth Circuit.⁵⁴ Republican Senators were outraged by these appointments because the Clinton White House had agreed not to make recess appointments, judicial or otherwise, without consulting Senate majority leaders.⁵⁵

Nevertheless, these last minute Clinton appointments presented the new Bush administration and an evenly divided Senate with a politically explosive appointment problem. Such appointments are pending until President George W. Bush submits them to the Senate. If President Bush chose not to forward these appointments, he risked angering Senate Democrats, who could then respond with increased opposition to Bush’s own judicial appointments.

Interestingly enough, the Clinton administration was not required to make these appointments - there were no emergency reasons justifying the appointments and the

⁵³ *Id.*

⁵⁴ Jonathan Groner, *Bush May Need to Show Restraint In Judge Picks: Even Split In Senate, Modest Mean Conservative Court May Face Confirmation Battles*, November 13, 2000, 23 Legal Times 9 (2000). In November of 2000, prior to the December appointments, sixty-six vacancies remain from the Clinton years in the federal district courts.

⁵⁵ *Id.* One commentator likened these recess appointments as the equivalent of an obscene gesture directed at Congress.

administration did not consult with Senate Republican leaders prior to making them. In fact, the Clinton administration had little to gain from these last minute appointments. The administration had already dramatically changed the composite of the federal judiciary by appointing 374 judges – almost 45 percent of the federal judiciary.⁵⁶

b. Transitioning To The George W. Bush White House

President George W. Bush's⁵⁷ judicial team is composed of advisers well versed in the selection process.⁵⁸ As one commentator has noted: ““This is not a new administration. These are old pros. They know how to play this game.””⁵⁹

As such, the judicial appointments team's first moves were to evaluate the appointments landscape from a political perspective and to announce a fairly radical change. As to the change, the Bush White House removed the “ABA out of the formal role in the judicial nomination process it was given by President Dwight Eisenhower in 1953”.⁶⁰ Conservatives had criticized the ABA's role in the judicial selection process for years, alleging that its selection criteria was weighted heavily in favor of liberal judicial selections.

⁵⁶ Ringel, *supra* note 49, at 1. An academic study of the Clinton appointed judges shows that as a whole they are just a bit more liberal than the judges appointed by Gerald Ford. Schultz, *supra* note 20, at 58.

⁵⁷ George W. Bush, as Texas governor, appointed four well-regarded, relatively non-ideological lawyers to the state's highest court. Jonathan Groner, *Pro-Business But Still Independent: The Bush Justices*, October 16, 2000, 23 Legal Times 1 (2000). Bush also named 134 judges to state courts at all levels. Bush's judiciary choices are “judges' judges,” meaning they tend to defer to the legislature rather than create new rights on their own. These judges favor business interests but are not sure votes for big business. These judges are independent thinkers and are willing to dissent. They are also very diverse.

⁵⁸ Jim Oliphant, *Tipping the Scales: Circuit by Circuit – Bush Picks Would Shift Balance of Power on Several Pivotal Appellate Courts*, May 14, 2001, 24 Legal Times 1 (2001).

⁵⁹ *Id.* (quoting law professor Herman Schwartz of American law school).

⁶⁰ Wheatley Aycock, *From New Appointees and a War on Terror to Law Firm Layoffs: A Look Back*, December 24, 2001, 24 Legal Times 23 (2001). Even though the ABA does not have a formal role, in June of 2001, they still submitted a ratings list to the Judiciary Committee. They approved of seven of Bush's nominations.

Second, with respect to the political landscape, the Bush administration surveyed the political makeup of the Senate. In the Senate, Republicans controlled both Senate seats in eighteen states, Democrats controlled both seats in eighteen states, with the remaining fourteen Senate delegations evenly split.⁶¹ In instances where Republicans controlled both Senate seats, the appointments process was expected to run smoothly as Senators were likely to arrange a way to share the judicial recommendation power.⁶² In the eighteen states where both senators were Democrats, the Bush administration solicited advice on potential nominees from a high-ranking Republican House members and/or the state's Republican governor.⁶³ Finally, in the fourteen States where the delegations were split, the Senators would be expected to devise a plan to share the nomination power.⁶⁴

Initially, the Senate, although split 50-50, was controlled by Republicans by virtue of Vice-President Dick Cheney's role as the tie breaking vote; therefore, all committees, including the judiciary, were controlled by Republicans. This gave Republicans in the judiciary committee a huge advantage as they controlled both the Senate and the White House at the same time. It would have been the first time that Republicans had

⁶¹ Jonathan Ringel, *GOP Senators Ready To Enter The Judge Game: Bush In The White House Empowers Law Makers On Bench Recommendations*, January 22, 2001. 24 Legal Times 6 (2001).

⁶² *Id.* In Texas, for instance, Republican Sens. Phil Gramm and Kay Bailey Hutchison will rely on Gramm's longtime 20-member judicial selection committee, downgraded to an "advisory group" during the Clinton years.

⁶³ *Id.* For instance, in New York, Republican Rep. Benjamin Gilman, the state's senior Republican in the House and Republican Gov. George Pataki will make judicial recommendations. In Michigan, Republican Rep. Fred Upton and Republican Gov. George Engler will make judicial recommendations. (This will include three seats currently open on the 6th Circuit). In Georgia, Republican Rep. John Linder will make judicial nominations.

⁶⁴ *Id.* In Iowa, Republican Sen. Charles Grassley will make the judicial selections, taking the reigns from Democratic Sen. Tom Harkin. Meanwhile, in Indiana, Republican Sen. Richard Lugar will make the judicial selections, taking the reigns from Democratic Senator Evan Bayh. Senator Lugar will have a steering team help select potential nominees. Members of this team include a committee of lawyers, business people, and a minister to help pick federal judges.

simultaneously controlled both houses of Congress and the White House in the modern political era.

However, the Republicans' tenuous majority in the Senate did not last long. In May 2001, Vermont Senator Jim Jeffords defected from the Republican Party – thus shifting control of the Senate to the Democrats.⁶⁵ The political landscape changed dramatically as Jeffords' Democratic colleague from Vermont, Senator Patrick Leahy, became chairman of the Judiciary Committee.⁶⁶ The shift in power resulted in a Democratic controlled Senate and a Republican White House, which created the likelihood that the Judiciary Committee would again engage in stall and delay tactics, especially on conservative nominations.

III. United States District Court Judge Confirmations Since 1985⁶⁷

The preceding section discussed the appointments process and the political skirmishes that have occurred in the years leading up to the George W. Bush administration, including the political reasons for delays. This section, as well as two that follow, statistically evaluate the reasons for appointments process delays, and assess certain individual characteristics or factors that tend to cause confirmation delays.

Confirmation delays are most prevalent for nominations of judges for district court. While the average confirmation time for Supreme Court Justices since 1789 is 22.17 days (Table 1) and circuit court judges since 1961 have been confirmed in an

⁶⁵ Wheatley Aycock, *From New Appointees and a War on Terror to Law Firm Layoffs: A Look Back*, December 24, 2001, 24 Legal Times 23 (2001).

⁶⁶ *Id.*

⁶⁷ The timeframe of 1985-2000 for district court judges was selected for two reasons. First, a sample of just over 600 confirmations assures reliability to a margin of error of plus or minus 4%. Second, such a timeframe allows examination of Presidential terms that were equally split between Republicans and Democrats (eight years each).

average of 75.70 days (Table 10), district court judges (since 1985) have taken an average of over 100 days to be confirmed.

To analyze these delays and their suspected causes, 614 district court confirmations since 1985 have been examined. As the following section explains, there are certain demographic and political factors that have a substantial effect on confirmation time for district court judges.

A. Gender/Age/Ethnic Origin⁶⁸

The Senate takes a longer time confirming women than they do men. As Table 21 shows, women take an average of 120.30 days to be confirmed (Column C) while men are confirmed in 96.37 days (Column D). In a theme that will repeat throughout this section, the data suggests that demographic traits that contribute to confirmation delay are becoming less influential, beginning at the district court level and working their way up through the judiciary. For example, women only take 25% longer than men to confirm at the district court level while they take 50% longer at the circuit court level.⁶⁹

Confirmation delays related to age are statistically relevant for district court appointments. Columns D through I of Table 21 suggest that confirmation delays based on age take on a traditional bell-curve distribution. Confirmations of those judges under 40 and those over 60 years of age at confirmation are confirmed most rapidly, while those judges in the midpoint age grouping of 46-50 take almost twice as long to confirm. One can only speculate that perhaps the rising young stars of the judiciary (as well as those long overdue for consideration) are confirmed on a fast track while the greatest

⁶⁸ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

⁶⁹ Since there have been only two women confirmed to the Supreme Court, it is still too early to tell (and the sample far too small) whether women as a class will be unduly delayed in confirmation to the Court.

scrutiny is reserved for those old enough to raise questions about their suitability (i.e., “Why weren’t they submitted sooner?”) yet young enough to create concern over their suitability for lifetime appointment.

The most compelling example of the evolving nature of demographic influence on confirmation delay involves the ethnic origin of nominees. At the Supreme Court level, it is noted that African-American nominees (albeit only two) had endured longer than normal delays in confirmation. At the circuit court level, bias against African-American nominees has largely subsided in favor of extended confirmation delays for Hispanic judges. This trend continues at the district court level. As Columns J and K of Table 21 illustrate, the confirmation times for Caucasian and African-American judges are practically identical (99.42 days and 101.99 days, respectively). While Hispanic judges take approximately 15% longer to be confirmed (114.70 days – Column L), this discrepancy is far lower than at the circuit court level, where Hispanics take twice as long to be confirmed. At the district court level, the ethnic group subjected to the most egregious delays are judges with Asian-American heritage. These judges have taken an average of 213.20 days (Column M) to be confirmed – more than double all other nominees.⁷⁰

B. Law School Ranking⁷¹

⁷⁰ Note that there were only 5 Asian-Americans confirmed to district court posts between 1985 and 2001, with the confirmation of Susan O. Mollway taking 531 days. Thus, it is possible that Judge Mollway’s lengthy confirmation has skewed the numbers for Asian-Americans as a whole. But, as in the lengthy confirmation process for Judge Richard Paez to the Ninth Circuit, the bias against ethnic groups in the confirmation process is typically manifested by the extended confirmation of one or two early nominees for the affected ethnic group.

⁷¹ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>. (This site provided information on the law school attended by each judge. In the case of judges with multiple law degrees, the first law degree obtained was used. Law School Rankings were obtained from U.S. News & World Report, available in <<http://www.usnews.com/usnews/edu/beyond/gradrank/law/gdlawt1.htm>>).

Law school rankings are less important at the district court level than at any of the other levels analyzed in this Article. Interestingly, the only statistically relevant bias related to law school choice showed that graduates of law schools in the top 10 take slightly longer to be confirmed (Column B – Table 22) than their counterparts. This slight anomaly can be attributed to the fact that three of the seven nominations to take longer than one year to be confirmed came from top 10 schools.⁷²

Again, Harvard is the predominant choice of law school for district court judges. Of those confirmed since 1985, 52 judges were Harvard graduates – more than doubling their nearest competitor, Yale, with 23. Upper echelon state law schools also offer impressive showings, with Texas, Virginia, California – Berkeley, and Florida providing a healthy number of its graduates to the district court bench.

C. College Ranking⁷³

Table 24 illustrates that there is no statistical difference between groupings of undergraduate colleges attended by district court nominees. Candidates from fourth tier schools take slightly longer to be confirmed, but not to a statistically relevant extent.

Ivy league schools are the undergraduate schools of choice for district court nominees, as evidenced by the popularity of Harvard, Princeton, and Yale in Table 25. Note, however, the large number of judges educated at “Other” schools. These schools

⁷² These three nominations (Susan O. Mollway, Margaret M. Morrow, and Dan A. Polster) have some amazing similarities. All three were nominated by President Clinton in his second term and all three attended Harvard Law School. Additionally, both Mollway and Morrow were confirmed to posts in the Ninth Circuit (notorious for confirmation delay) and are female (again, subject to undue confirmation delay).

⁷³ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>. (This site provided information on the college attended by each judge. In the case of judges with multiple degrees, the first degree obtained was used. College Rankings were obtained from U.S. News & World Report, available in <<http://www.usnews.com/usnews/edu/college/corank.htm>>).

are typically smaller, liberal arts colleges not rated by U.S. News & World Report in the major university category.

D. Federal Circuit⁷⁴

Similar to the findings at the circuit court level, district court confirmations to the First Circuit occur substantially quicker than in other circuits (Column B - Table 26). An extraordinary 56.0% of nominees to district court posts in the First Circuit are confirmed in 60 days or less, compared to a nationwide average of 34.4%. Unlike circuit court posts, however, there are no circuits in which excessive (compared to the national average) delays are found.

E. Congress⁷⁵

Table 27 offers an interesting look at the effect that the year of a President's term can have on the confirmation process. Note the quicker confirmation times of the first two years of a term (Columns B, D, and F) compared to the longer confirmation times of the last two years of a term (Columns C, E, and G). This trend did not hold true for the 105th Congress, however, as the impeachment proceedings concerning Bill Clinton may likely have had an impact on confirmation times during the first two years of President Clinton's last term. It should also be noted that the last three Congressional periods analyzed (Columns G, H, and I) involved the combination of a Democratic President and a Republican Senate – a combination that clearly contributes to judicial confirmation delay.

F. Political Party – President/Senate⁷⁶

⁷⁴ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

⁷⁵ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

The delays created by diverse control of the White House and the Senate is clearly evident in Table 28. District court nominees of a Republican President that are confirmed by a Republican Senate (Column F) are confirmed in a little more than six weeks while judges nominated by a Democratic President for confirmation by a Republican Senate take more than three times as long to be confirmed (Column C). There can be no doubt that partisan politics, particularly when there is tension between the President and the Senate, have a tremendous effect on the confirmation of district court judges.

G. Year of President's Term⁷⁷

Similar to the analysis provided for circuit court nominations, Table 29 demonstrates that confirmations take progressively longer as a President's term advances. Note that 15 of the 16 longest confirmations (over 300 days – Columns C and E) occurred in the even numbered years of a President's term. The statistical reasons for this delay are documented in this section of the circuit court analysis – but the logic clearly demonstrates that it is impossible for any confirmation that takes longer than one year to occur in an odd-numbered year of a President's term.

H. Presidential Term⁷⁸

Table 30 shows in yet another way the increased delays plaguing the confirmation process. These delays can be analyzed in several ways, but one way

⁷⁶ Information for these tables was collected from three sources: United States Presidents, available in <<http://www.theriver.com/TheRiver/Café/Calendar/us2pres.html>>; Majority and Minority Parties, Senate Statistics, available in <<http://www.senate.gov/learning/stat13.html>>; Majority and Minority Leaders, Senate Statistics, available in <<http://www.senate.gov/learning/stat8.html>>.

⁷⁷ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

⁷⁸ Information for these tables was collected from two sources: United States Presidents, available in <<http://www.theriver.com/TheRiver/Café/Calendar/us2pres.html>>; Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

that is most revealing involves the number of rapid (under 60 days) confirmations. In President Reagan's second term, 55.9% of all district court confirmations occurred in 60 days or less. Contrast that with the mere 14.0% rapid confirmations during President Clinton's second term. Thus, the increased average delays are not the result of a few contentious confirmations; rather, the fault can be placed on the almost total extinction of the "rapid confirmation".

IV. United States Circuit Court Judge Confirmations Since 1961⁷⁹

While examination of Supreme Court confirmation delays yields some interesting trends, it is at the circuit and district court levels where the confirmation process seems most troubled. Vacancies on the Supreme Court are not tolerated for very long, while long delays at the lower levels of the Judiciary have become so common as to be accepted as normal operating procedure. This section examines Circuit Court of Appeals confirmations since 1961. 362 confirmations are analyzed here in order to determine if there are demographic and political factors that have substantial effect on confirmation times of circuit court judges.

A. Gender/Age/Ethnic Origin⁸⁰

What may be obvious to seasoned observers of the Judicial appointment process is clearly illustrated in Column C of Table 10 – nominations of female judges to the circuit courts take almost twice as long (118.04 days to 69.69 days) as their male counterparts. The bias against female judges is evident at both ends of the confirmation

⁷⁹ The timeframe of 1961-2000 for circuit court judges was selected for two reasons. First, a cursory examination of confirmation delays indicate that such delays first became prevalent in the 1960s. Second, such a timeframe allows examination of Presidential terms that were equally split between Republicans and Democrats (20 years each).

⁸⁰ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

delay scale. While 56.8% of male nominees are confirmed in 60 days or less, only 26.7% of female nominees are confirmed that rapidly. On the opposite end of the scale, six judges took more than one year to be confirmed – three of those were female. This statistic would not be so alarming were it not for the fact that 317 of the 362 nominations were males. Thus, almost 7% of female nominees take more than one year to be confirmed while less than 1% of males are similarly delayed.

It is important to note that the appointment of women judges was quite the exception as late as the 1960's. Shortly after President Kennedy took office in 1961, Congress enacted a bill creating seventy-three new federal judgeships.⁸¹ Kennedy, at the urging of women's groups, pledged to appoint both "men and women of unquestioned ability".⁸² Yet Kennedy appointed only one woman to a lifetime judgeship, Sarah T. Hughes of the Northern District of Texas.⁸³ Kennedy's successor, Lyndon Johnson, performed no better in the appointment of women to the federal bench. By 1967, Johnson's only female appointment to a lifetime post was Constance Baker Motley.⁸⁴

Age at confirmation does not seem to particularly affect confirmation times, although it takes slightly longer than average for nominees over the age of 60 to be confirmed.

In the section analyzing Supreme Court nominations, it is noted that African-American nominees take much longer to be confirmed. This problem is not nearly as pervasive at the circuit court level. African-American judges take only slightly longer

⁸¹ SHELDON GOLDMAN, PICKING FEDERAL JUDGES 180 (1997).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* (Motley was especially noteworthy as she became the first African-American woman to be appointed to the federal bench).

(83.09 days to 71.45 days) to confirm than their Caucasian counterparts. At the circuit court level, the ethnic group most encumbered by prolonged confirmation processes are Hispanic judges. Hispanic nominees to the circuit courts take more than twice as long (168.25 days) to confirm as all other ethnic groups combined. Thus, it seems as if the ethnic bias that may exist at the Supreme Court level against African-American nominees almost certainly exists at the circuit court level against Hispanics.

An interesting question arises when considering the circuit court bias against Hispanic nominees. Is the bias racial or political? While President Richard Nixon nominated the first Asian-American to the appeals court bench,⁸⁵ he and his aides were extremely interested in appointing (what they believed to be) the first Hispanic judge to the federal bench as well.⁸⁶ It is likely that the Nixon administration was more motivated by the allure of increasing Hispanic votes for the Republican party than by any desire for racial equity in judicial appointments. Other administrations, both Republican and Democrat, can be suspected of using the selection of Hispanic nominees to the bench as political, rather than meritorious, appointments.

B. Law School Ranking⁸⁷

In another interesting paradox, Table 11 demonstrates that graduates of top 10 law schools take longer to be confirmed as circuit court judges than graduates of other law

⁸⁵ *Id.* at 218. (Nixon nominated Herbert Y.C. Choy, of Korean ancestry) for a seat on the Ninth Circuit on April 7, 1971).

⁸⁶ *Id.* at 218-219. (Nixon considered making Arthur L. Alarcon the first Mexican American federal judge. Unbeknownst to Nixon and his aides, John Kennedy had already appointed Reynaldo Garza and Lyndon Johnson had likewise appointed Manuel Real, both of whom were Mexican Americans. Harold Medina had also already been appointed to the bench, but his Hispanic origins were unknown both by the administration that appointed him and the public).

⁸⁷ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>. (This site provided information on the law school attended by each judge. In the case of judges with multiple law degrees, the first law degree obtained was used. Law School Rankings were obtained from U.S. News & World Report, available in <<http://www.usnews.com/usnews/edu/beyond/gradrank/law/gdlawt1.htm>>).

schools. Not only do graduates of the top 10 law schools take longer to be confirmed than graduates of schools not ranked in the top 10 (an average of 88.10 days compared to an overall average of 75.70 days), but 5 of the 6 nominees that took over a year to be confirmed came from top 10 law schools.

It is possible that this paradox exists because of the prolific writing of circuit court nominees from top 10 schools. Controversial writings can sometimes cause delays in confirmation. More likely, however, is the recognition that circuit court judges from top 10 schools are prime candidates for eventual Supreme Court appointments. This likelihood may cause the Senate to subject these “elite” candidates to greater scrutiny than other circuit court nominees.

Table 12 further illustrates the dominance that Harvard Law School graduates exercise on the federal bench. 57 of the judges included in this study attended Harvard; the next most prolific school, Yale, supplied 32 of its graduates to circuit court posts. The dominance of Ivy League schools at the Supreme Court level carries over, albeit to a lesser degree, at the circuit court level. Here, prestigious state universities begin to make their presence known with schools such as Michigan, Virginia, and Texas providing significant numbers of their graduates to the federal bench.

C. College Ranking⁸⁸

Much like the Supreme Court analysis, there is little statistical significance to the undergraduate school attended by circuit court judges with regard to confirmation delays. One notable exception, however, can be seen in Column G of Table 13. Graduates of

⁸⁸ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>. (This site provided information on the college attended by each judge. In the case of judges with multiple degrees, the first degree obtained was used. College Rankings were obtained from U.S. News & World Report, available in <<http://www.usnews.com/usnews/edu/college/corank.htm>>).

“fourth tier” universities take almost twice as long to be confirmed as graduates of any other group of schools. Since only eight such graduates have been confirmed, it is possible that this delay is merely a statistical anomaly that would not exist were there more appointees from this group of schools.

Again, Table 14 shows that Ivy League schools are the most common training grounds for circuit court judges, with major state universities also well represented. It is interesting to note that the United States Military Academy and the United States Naval Academy (with four and two confirmations respectively) are well represented in the circuit courts.

D. Federal Circuit⁸⁹

Since 1961, almost 30% of the circuit court appointments have been to one of two circuits, the Ninth (with 57 confirmations) and the Fifth (with 50). As Table 15 illustrates, lengthy confirmation times are prevalent in four circuits: the Second, Ninth, Eleventh, and Federal Circuits. Conversely, confirmations are much faster than average in the First, Fourth, Fifth, and Seventh Circuits.

E. Congress⁹⁰

Throughout the sixties and seventies, confirmation times for circuit court judges stayed consistently under 45 days with one notable exception. As shown in Column K of Table 16, the 96th Congress in 1979-1980 experienced significant delays in confirming President Carter’s circuit court nominees. One can speculate that foreign policy distractions such as the hostage crisis in Tehran coupled with his imminent departure from the White House after a single term likely contributed to these extraordinary delays.

⁸⁹ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

⁹⁰ *Id.*

Table 17 illustrates the increasing delays in circuit court confirmations over the last half of the eighties and the entirety of the nineties. Beginning with the then record average confirmation time of 118.81 days for the 100th Congress in 1987-1988, the delays have increased for the most part with each subsequent Congress through the 106th Congress, which took an excruciatingly long 226.87 days to confirm circuit court judges. Note, for example, that the 99th Congress (or, more precisely, the 99th Senate) confirmed 23 circuit court judges in 60 days or less – more than the next seven Congressional sessions combined!

F. Political Party – President/Senate⁹¹

If the results of the 2002 election return control of the Senate to the Republican party, circuit judge confirmations may occur more rapidly. As Column F of Table 18 illustrates, the shortest confirmation times since 1961 have occurred when Republican-controlled Senates confirm the nominations of a Republican President. Conversely, the longest confirmation times (almost three times longer than average) occurred when Democratic Presidents submitted nominees to Republican Senates.

Admittedly, the abnormally long confirmation times for judges nominated by Democratic presidents and confirmed by a Republican Senate (Column C of Table 18) are due in large part to the fact that from 1994-2000, there was a Democratic President-Republican Senate combination. In fact, 20 of the 25 longest confirmation delays (each over 200 days) have occurred with a Democrat in the White House. This problem is not limited to Bill Clinton, however – John F. Kennedy and Jimmy Carter also submitted

⁹¹ Information for these tables was collected from three sources: United States Presidents, available in <<http://www.theriver.com/TheRiver/Café/Calendar/us2pres.html>>; Majority and Minority Parties, Senate Statistics, available in <<http://www.senate.gov/learning/stat13.html>>; Majority and Minority Leaders, Senate Statistics, available in <<http://www.senate.gov/learning/stat8.html>>.

nominees that were similarly delayed. Interestingly, only three Presidents in the last forty years have escaped this logjam – Lyndon B. Johnson, Richard Nixon, and Gerald Ford.

Another negative influence on circuit judge confirmation time is related to Senate leadership. While nominees for the circuits that are home to the Majority Leader and Majority Whip of the Senate are confirmed slightly more rapidly than average, those nominees from the circuits of the Minority leadership experience delays that are significantly longer than average (Columns J and K of Table 18).

G. Year of President's Term⁹²

Because circuit court nominations are much more frequent and are less subject to media scrutiny, the Senate is much more likely to delay confirmation in the latter stages of a President's term in the hopes of minority Senators that their party's candidate will prevail in the presidential election, thus allowing the new president to nominate judges more sympathetic to their ideology. Table 19 shows that circuit court judges confirmed in the first year of a President's term are confirmed in just 46.41 days (Column B) while fourth-year confirmations take an average of 107.37 days (Column E).

Note, however, that second-year nominations (Column C) take slightly longer than third-year nominations (Column D). There are two fundamental reasons that may be responsible for this anomaly. First, abnormally long confirmation almost always occur in the even-numbered years of a President's term, since longer confirmations frequently cross from the first year of a particular Congress to the second. For example, it would be almost impossible for a nominee that took 270 days to confirm to be

⁹² Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

nominated and confirmed in the first or third year of a President's term⁹³ – invariably, the nominee's confirmation period would extend beyond January 1 of the nominating year and result in confirmation in an even-numbered year.

The second and more politically-related reason centers on Congressional elections. It is likely that second-year confirmations are delayed in the hopes that the minority party will prevail in the November elections and regain power. Moreover, a third of the Senate is actively engaged in elections of their own during these years. Once the elections are resolved and future party control of the Senate is known, confirmations (albeit unduly delayed) resume.

H. Presidential Term⁹⁴

Table 20 offers perhaps the most vivid display on the progressive deterioration of the once speedy confirmation of circuit court judges. For example, 19 of John F. Kennedy's 20 nominees (Column B) were confirmed in under 60 days. Richard Nixon, in an abbreviated second term plagued by Watergate scandal, had all eight of his nominees confirmed in 60 days or less (Column F). Contrast these results with the dismal confirmation record of Bill Clinton's two terms (Columns L and M), where less than 10 percent (6 confirmations out of 65) or circuit court judges were confirmed in under 61 days.

⁹³ Incidentally, three of Bill Clinton's nominees accomplished this feat of timing. In the third year of Clinton's first term, James L. Dennis was nominated and confirmed in the same year with a delay of 252 days. In the first year of his second term, Clinton managed the feat again with the confirmation of Marjorie O. Rendell in 262 days. Last, President Clinton set the dubious modern record for odd-year confirmation by nominating and confirming Ronald M. Gould in 295 days of the same calendar year.

⁹⁴ Information for these tables was collected from two sources: United States Presidents, available in <<http://www.theriver.com/TheRiver/Café/Calendar/us2pres.html>>; Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

Table 20 clearly demonstrates that these delays are not specific to the Clinton presidency – in fact, their roots can be traced to the Carter administration. President Carter’s circuit court nominees took twice as long to be confirmed as the nominees of any prior President since Kennedy. After a brief return to efficient confirmation during the first Reagan administration, confirmation delays increased from a crisp 39.21 days (Column I) to the tortoise-like 214.20 days of the second Clinton administration (Column M).

At least some of the delays of Carter’s nominees may be attributed to President Carter’s keen interest in judicial selection reform and the passage of the Omnibus Judgeship Act of 1978. During his campaign in 1976, Carter pledged that he would refrain from appointing judges for political reasons and instead select judges based on merit.⁹⁵ To implement his plan, Carter issued Executive Order 11972 creating the United States Circuit Judge Nominating Commission just four weeks after taking office.⁹⁶ The Commission created panels of lawyers and nonlawyers designed to provide nomination recommendations to the President.⁹⁷ The Commission failed to achieve its desired results, as differences over affirmative action regarding circuit court nominations and reluctance from Senators of both parties to yield their influence in the process only contributed to the excessive delays of appointments during the Carter administration.⁹⁸ Thus, despite the fact that the Omnibus Act created 117 new federal district court

⁹⁵ GOLDMAN, *supra* note 23, at 238.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 238-50.

judgeships and 35 new appeals court posts, confirmations were hampered with longer delays than ever.⁹⁹

V. United States Supreme Court Confirmations Since 1789¹⁰⁰

Although to a lesser degree than the gridlock plaguing circuit and district court appointments, Senate confirmation of Supreme Court Justices has also evolved into a more prolonged and exasperating process. Bill Clinton's two appointments (Justices Breyer and Ginsburg) waited 72 and 43 days respectively.¹⁰¹ In contrast, nine of George Washington's ten appointments were confirmed in two days or less.¹⁰² One might argue that such efficiency could be attributed to the infancy of the nation and the possibility that the Senate did not fully comprehend the important role that the Supreme Court would play in the development of the United States. Others might contend that the extended duration of the confirmation process can be attributed to the heightened media scrutiny surrounding judicial nominations, particularly in the Supreme Court. These arguments, however, lose some of their luster when compared to some of the rapid confirmations that have occurred in the last half of the 20th century. Justice Byron R. White, for example, was nominated by President Kennedy and confirmed just eight days later.¹⁰³ Chief Justice Warren Earl Burger (nominated by President Nixon) was confirmed in an equally astonishing seventeen days.¹⁰⁴

⁹⁹ *Id.* at 241-42.

¹⁰⁰ Included in the analysis of Supreme Court confirmations are those confirmations wherein an Associate Justice of the Court was elevated to Chief Justice. Thus, several Supreme Court justices (e.g., Rehnquist) were actually confirmed twice by the United States Senate and are included twice in this analysis.

¹⁰¹ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Nevertheless, rapid confirmations of Supreme Court Justices seem to be the exception rather than the rule. In this section, all 110 Supreme Court confirmations will be analyzed and compared according to a variety of demographic and political factors to determine which factors affect the confirmation times of United States Supreme Court Justices.

A. Gender/Age/Ethnic Origin¹⁰⁵

Table 1 details the Gender, Age, and Ethnic Origins of all Supreme Court Justices. The average confirmation time for a Supreme Court Justice is 22.17 days. Although there have only been two women confirmed to the Court, the data in Table 1 suggests that women take longer to be confirmed than men. The statistics are skewed, however, by the rapid confirmation times of the 18th and 19th centuries, when no women were permitted to vote, much less serve on the Court. Closer examination of the data in Table 9 of this Note (Supreme Court confirmation times by Presidential Term) shows that Justices Sandra Day O'Connor and Ruth Bader Ginsburg's average confirmation time of 37.50 days was far superior to other Justices of the modern era. In fact, one must look all the way back to Gerald Ford's nomination of John Paul Stevens in 1975 to find a quicker confirmation than those of the Court's first two female Justices. If anything, the limited data indicates that females are typically confirmed more rapidly than their male counterparts.

Table 1 also examines confirmation times based on the ages of Justices on their date of confirmation. Overall, the data suggests that younger nominees are confirmed

¹⁰⁵ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>. (Note that the birth dates for John Blair, Jr., James Moore Wayne, and John Catron are listed only with the year of their respective births. Thus, an arbitrary mid-year birth date of June 30 was used for these three Supreme Court justices as a "best guess" for statistical analysis).

more rapidly than older nominees. Some of this can be attributed to the tendency in the early years of the Court to nominate younger men. Attorneys of the 18th and 19th centuries were not required to attend a four year college and three years of law school to practice law – many, in fact, were self-educated or “read law” for established attorneys to prepare for legal practice. Additionally, the increased life expectancy of today has provided a greater likelihood that older persons will be nominated to the Court. One statistical anomaly had a substantial effect on the observation that younger nominees were confirmed more rapidly than others. The 41-45 age group took twice as long to be confirmed as 46-50 and five times longer than those 40 and under. This can largely be attributed to the unprecedented delay and scrutiny surrounding the nomination of Clarence Thomas. The average confirmation time for nominees between 41 and 45 would have been less than 18 days (rather than an average of over 24 days including Justice Thomas) were it not for his controversial and prolonged Senate confirmation.¹⁰⁶

Analysis of Supreme Court confirmations based on Ethnic Origin is constrained by the scarcity of minority appointments. As with females, there have only been two minority confirmations to the Supreme Court. Unlike the gender analysis, there appears to be a clear increase in confirmation times for African-American nominees when compared to their Caucasian counterparts. Caucasian nominees were confirmed in an average of 20.94 days. In contrast, the two African-American nominees (Justices Thurgood Marshall and Clarence Thomas) were confirmed in 78 and 99 days respectively.¹⁰⁷ While two nominations are certainly insufficient to imply statistical reliability, the wide disparity in confirmation times between Caucasians and African-

¹⁰⁶ Justice Thomas, at age 43, took 99 days to be confirmed in 1991.

¹⁰⁷ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

Americans suggests that close scrutiny should be directed toward future minority nominations to insure that any excessive delays be attributable to legitimate judicial concerns rather than racial bias.

B. Law School Ranking¹⁰⁸

Analysis of Supreme Court confirmations based on the law school attended by each Justice yielded an inverse bell-curve for confirmation times. Justices attending unranked law schools (typically 18th and 19th century appointments) and those Justices attending law schools ranked 11-50 or in the second tier were confirmed most rapidly. Third and fourth tier law school graduates took almost twice as long to be confirmed. Interestingly, graduates of top 10 law schools took twice as long to be confirmed as Supreme Court Justices than those graduating from other schools. The data does not suggest any historical bias for this result. Instead, it might be speculated that graduates from top 10 programs may have published significantly more articles and papers that would lengthen the confirmation process as the Senate studied these writings, or that such high profile nominees might have otherwise generated more attention and controversy than those nominees from schools less renowned. While there is no direct evidence to suggest this, it seems a plausible theory for delays where a reasonable observer might expect speedier confirmations.

Table 3 lists the totals for each law school attended by at least one Justice. The large number categorized under “Other” includes those justices from the 18th and 19th

¹⁰⁸ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>. (This site provided information on the law school attended by each judge. In the case of judges with multiple law degrees, the first law degree obtained was used. Many early Supreme Court Justices did not attend law school, but instead “read law”. These Justices’ law school has been designated for analytical purposes as “Other”. Law School Rankings were obtained from U.S. News & World Report, available in <<http://www.usnews.com/usnews/edu/beyond/gradrank/law/gdlawt1.htm>>).

centuries that did not attend law school, but instead gained their legal education in other ways. Like the circuit court and district court judges discussed later in this Note, Harvard clearly dominates as the law school of choice among Supreme Court Justices. In fact, more Justices graduated from Harvard Law School than the next three most popular law schools (Yale, Columbia, and Michigan) combined. One important factor to consider in evaluating this data would involve the number of students that graduate each year from these schools; if, for example, Harvard has historically admitted and graduated higher numbers of students, that would help explain their historical dominance in the Supreme Court.

C. College Ranking¹⁰⁹

There appears to be no strong statistical correlation between a Supreme Court Justice's choice of undergraduate college and the length of time necessary to gain confirmation to the Court (*see* Table 4). Of the fifteen Justices requiring more than 60 days for confirmation, almost half (seven) attended colleges rated in the top 10.

Interestingly, however, Table 5 shows that Yale is a slightly more prevalent choice for undergraduate studies than Harvard. Ivy League schools dwarf their counterparts for undergraduate studies among Supreme Court Justices (with the exception of the "Other" category which includes not only those Justices that did not attend undergraduate college, but also those who attended unranked liberal arts colleges).

D. Congress¹¹⁰

¹⁰⁹ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>. (This site provided information on the college attended by each judge. In the case of judges with multiple degrees, the first degree obtained was used. Some judges, particularly early Supreme Court Justices, either did not attend college or were admitted immediately to law school due to previous experience such as military service. These Justices' college has been designated for analytical purposes as "Other". College Rankings were obtained from U.S. News & World Report, available in <<http://www.usnews.com/usnews/edu/college/corank.htm>>).

Table 6 analyzes Congress in twenty-year increments in order to determine if there were certain periods in history in which confirmation of Supreme Court Justices was more fraught with delay than others. Three distinct periods emerge from this analysis where confirmation delays were more common.

The first instances of confirmation delay occurred during the evolution of the political party system that began with Federalist and Jeffersonian Republicans and resulted in the present day two-party structure of Democrats and Republicans. For example, President James Monroe nominated Justice Smith Thompson late in his second Presidential term.¹¹¹ Monroe, a Jeffersonian, saw this nomination delayed by a Jacksonian (named for soon-to-be-President Andrew Jackson) Congress for an unprecedented 95 days.¹¹² Yet this delay had little to do with political differences. Unlike today, where nominees are carefully “vetted” by Presidents and where nominations are “accepted” prior to public release of the nominee’s identity, President Monroe nominated Smith Thompson without being certain that he would accept.¹¹³ The lengthy delay in Thompson’s confirmation was due to Thompson’s indecision on accepting the nomination.¹¹⁴ Once Thompson agreed, he was quickly confirmed.¹¹⁵

Political differences and retribution for prior political actions were responsible, however, for delay when the nominations of Philip Pendleton Barbour and Roger Taney

¹¹⁰ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>. (This site provided both nomination and confirmation dates. Recess appointments were not considered for purposes of this analysis.).

¹¹¹ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

¹¹² *Id.*

¹¹³ HENRY J. ABRAHAM, JUSTICES, PRESIDENTS AND SENATORS 69 (1999).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

(both nominated by Andrew Jackson) were confirmed in a similarly excessive 78 days¹¹⁶ by a Senate heavily influenced by the last vestiges of Whig and Calhounian factions.¹¹⁷ Taney's first nomination failed in the Senate, as the Senate refused to act on the nomination on the last day of its session.¹¹⁸ The controversy surrounding Taney was based in large part on his acts as Secretary of the Treasury (via recess appointment) under Jackson.¹¹⁹ Taney fully approved of and supervised President Jackson's order that all government deposits be removed from the Bank of the United States.¹²⁰ The Bank was the major controversy of the day, and the Whig and Calhounian factions retaliated by blocking Taney's post-recess appointment as Treasury Secretary.¹²¹ An angry Jackson responded by nominating Taney for the Supreme Court, only to have the appointment blocked again by the opposition.¹²²

An infuriated Andrew Jackson refused to make another nomination, intent on nominating Taney again.¹²³ The occasion to do so presented itself with the death of Chief Justice John Marshall on July 6, 1835.¹²⁴ Jackson was now presented with the rather unique opportunity to nominate two Supreme Court Justices simultaneously, as well as nomination of a Chief Justice.¹²⁵ Jackson responded by nominating Taney to succeed Marshall as Chief Justice and Philip Pendleton Barbour for the vacancy left

¹¹⁶ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

¹¹⁷ ABRAHAM, *supra* note 141, at 74-75 (1999).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 75.

¹²⁴ *Id.*

¹²⁵ *Id.*

unfilled with Taney's previous nomination.¹²⁶ Bitter debates ensued in the Senate over Taney, with Barbour's confirmation delayed by his link to the Taney nomination.¹²⁷ Eventually, both were confirmed by votes that were not nearly as close as the lengthy debates might have suggested.¹²⁸

Certainly, the increasingly volatile issues of slavery and states' rights contributed to these delays (as well as residual hard feelings over the Bank of the United States), but the precedent had been firmly established – one of the primary battlegrounds in political warfare was the confirmation of Supreme Court justices.

The second period of excessive confirmation delay happened during the post-Reconstruction period of 1869-1888. Remarkably, confirmation times during the Civil War/Reconstruction era (1849-1868) were the fastest in American history, with Supreme Court Justices being confirmed in an average of 7.38 days. This efficiency stands in stark contrast to the next 20-year span, in which the average confirmation time increased to 27.64 days. Interestingly, the evidence indicates that these confirmation delays had more to do with judicial issues and conflicts of interest than politics. Presidents Rutherford B. Hayes and James Garfield nominated Justices John Harlan and Stanley Matthews¹²⁹ who were confirmed in 44 and 59 days, respectively.¹³⁰

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* (Barbour was approved by a 30-11 margin in the Senate, while Taney was confirmed by a 29-15 vote).

¹²⁹ *Id.* at 100. (Matthews was originally nominated by Hayes in the last days of his administration and was not acted upon by the Senate. Garfield resubmitted his name and Matthews was ultimately confirmed).

¹³⁰ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

Justice Harlan's nomination was controversial by the nature of his background and judicial leanings. John Marshall Harlan I¹³¹ was born of a slaveholding family. As his judicial career evolved through Reconstruction, he became a strong advocate of the Civil War Amendments to the Constitution, and expressed his view in many dissenting opinions that the Fourteenth Amendment incorporated the Bill of Rights.¹³² This view was considered "eccentric" at the time, but was later embraced by the Warren Court and its chief proponent of "absorption", Justice Hugo L. Black.¹³³ Nevertheless, this "eccentricity" resulted in delayed confirmation for Justice Harlan.

The delays surrounding the nomination of Stanley Matthews are notable in that for perhaps the first time, organized interest groups demonstrated opposition to a nominee for the nation's highest court.¹³⁴ Matthews was considered unsuitable by many for his strong financial ties to corporate and railroad interests, most notably financier Jay Gould.¹³⁵ These ties evoked such strong opposition in the Senate that, on Matthews' first nomination, the Committee on the Judiciary refused to report the nomination for floor action.¹³⁶ Surprisingly, newly elected President Garfield resubmitted Matthews almost immediately after taking office.¹³⁷ The strong political and financial influence of Gould

¹³¹ Abraham, *supra* note 141, at 101. (Justice Harlan's grandson, who bore his name, also served in the Supreme Court from 1955-1971).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 102.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 103.

and his associates was primarily responsible for Matthews' confirmation, albeit by a single vote.¹³⁸

Only the nominations of William B. Woods (nominated by Republican Hayes and confirmed by a Democratic Senate) and the Supreme Court nominations of President Chester A. Arthur (Horace Gray and Samuel Blatchford) were rapidly confirmed during this period.¹³⁹ The election of Benjamin Hayes in 1892 signaled the end of this era of Supreme Court confirmation delay.

As stated in the introduction of this note, we are currently embroiled in the longest and most extreme period of Supreme Court confirmation delay in American history. Since 1949, the time required to confirm Supreme Court Justices has quadrupled from an average of 11.47 days¹⁴⁰ to an average of almost 50 days. The reasons for these delays are speculative, but certainly partisan politics is one of the chief culprits. The influence of political factors in Supreme Court nominations is best evidenced by the nominees of Bill Clinton. While the nominations of Ruth Bader Ginsburg and Stephen G. Breyer were no more politically motivated than normal, evidence of heightened political influence is best evidenced by Clinton's initial selections, each of whom refused

¹³⁸ *Id.* (To date, Stanley Matthews remains the only Supreme Court Justice confirmed by a single vote – he was confirmed by a 24-23 margin after two months of bitter debate).

¹³⁹ *Id.* (Justice Woods' nomination was confirmed in 6 days while President Arthur's nominations of Horace Gray and Samuel Blatchford took 1 and 9 days, respectively). *See also id.* 103-04. (In the wake of Arthur's unpopular selection as Garfield's Vice President amid allegations of "political hackmanship and spoilsmanship", most observers were thrilled that Arthur rejected such partisan leanings in selecting two nominees that were eminently qualified and almost universally respected. Alas, Arthur returned to his roots with the nomination of his one-time political mentor, Senator Roscoe Conkling of New York. In keeping with the Senate's tradition of never rejecting one of its own, Conkling was confirmed easily in spite of acrimonious floor debate. Conkling, however, declined the appointment just five days later, prompting the *New York Times*' sarcastic suggestion that he deferred because "there was not enough money in the post of justice of the U.S. Supreme Court").

¹⁴⁰ In the Depression and World War II era of 1929-1948, fifteen Justices were confirmed. Amazingly, each Justice was confirmed in less than 30 days as President Roosevelt and a heavily Democratic Senate controlled the most efficient confirmation process since the Civil War.

the nomination. Clinton's first choice for the seat ultimately occupied by Ginsburg was New York Governor Mario Cuomo.¹⁴¹ After Cuomo declined, Clinton looked to Secretary of Education Richard Riley and Secretary of the Interior Bruce Babbitt.¹⁴² Each was ultimately deterred from accepting for political reasons as well.¹⁴³ Clinton's selection of Breyer was made only after Senate Majority Leader George Mitchell declined, again citing political influences.¹⁴⁴ Thus, it seems likely that political influences have impacted recent Supreme Court confirmation delays, since it soon becomes public knowledge that nominees are not even a President's first choice. Additionally, heightened media scrutiny and an ever-increasing recognition by the American public of the importance of Supreme Court appointments have contributed to these increased delays. As columns J, K, and L of Table 6 indicate, delays continue to rise in the confirmation of Supreme Court Justices.

E. Political Party – President/Senate¹⁴⁵

In the previous section, it was noted that the first era of confirmation delay was based on political party upheaval and times when the political affiliation of the President is at odds with the political party controlling the Senate. Table 7 examines Supreme Court nominations under these circumstances.

Not surprisingly, Supreme Court confirmations take twice as long on average when there are conflicting parties in control of the Executive branch and the Senate.

¹⁴¹ *Id.* at 317.

¹⁴² *Id.* at 318.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 322. (Mitchell declined, providing the explanation that his nomination would impact his ability to serve as floor leader for the passage of the Clinton health care legislation, which ultimately failed anyway).

¹⁴⁵ Information for these tables was collected from two sources: United States Presidents, available in <<http://www.theriver.com/TheRiver/Café/Calendar/us2pres.html>>; Majority and Minority Parties, Senate Statistics, available in <<http://www.senate.gov/learning/stat13.html>>.

Column C of Table 7 shows that nominees by a Democratic President confirmed by a Republican Senate take twice as long as similar nominations confirmed by a Democratic Senate (an average of 42.67 days to 21.14 days). A similar disparity is evident when the roles are reversed, as Democratic Senates take three times as long to confirm the nominees of a Republican President than do Republican Senates (47.57 days to 25.73). This data provides strong evidence that the Supreme Court confirmation process is heavily politicized and that extended confirmation times are the result of partisan wrangling when opposing political parties control the Presidency and the Senate. Of course, there are some that would argue that the process was designed to be subject to political pressures and that vigorous confirmation proceedings insure that appointments to the Court are thoroughly scrutinized and representative of the judicial preferences of the electorate.

F. Year of President's Term¹⁴⁶

Another factor in confirmation delays for Supreme Court Justices involves the year of the Presidential term (i.e., first year, fourth year, etc.) in which the Justice was nominated. Table 8 illustrates that confirmation times are affected by the year of a President's term.

Supreme Court nominations made in the first two years of a President's term are confirmed much more rapidly than the third or fourth years. First year nominations are confirmed in an average of 14.75 days and second year nominations are approved in an average of 18.21 days. In contrast, third year confirmations take an average of 33.86 years – more than twice the time required in the first two years. Fourth year

¹⁴⁶ Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

confirmations are also above the average time of 22.17 days with an average confirmation of 26.77 days.

Data indicating that confirmation times are longer in the third year rather than the fourth might lead one to believe that an imminent change in party control of the White House is not the driving force that one might assume. However, several of the quickest fourth year confirmations occurred in the final year of popular President's (e.g., Grant, Lincoln, Jefferson) first terms – when it was probably evident to the Senate that cooperation might be in the best interest of a Senate that would be expected to work with the nominating President for an additional four years. Thus, it is evident that an important factor in the confirmation times of Supreme Court Justices is the year of the term of the nominating President – the earlier in the term the nomination is made, the speedier the resulting confirmation.

G. Presidential Term¹⁴⁷

One might assume that confirmation delays have been more prevalent among nominations made by controversial Presidents. Analysis of confirmations made since 1961 suggests otherwise.

Since 1961, three of the most lopsided victors in Presidential elections have been Lyndon Johnson in 1964,¹⁴⁸ Ronald Reagan in 1984,¹⁴⁹ and George H.W. Bush in

¹⁴⁷ Information for these tables was collected from two sources: United States Presidents, available in <<http://www.theriver.com/TheRiver/Café/Calendar/us2pres.html>>; Judges of the United States Courts, Federal Judiciary Center, available in <<http://air.fjc.gov>>.

¹⁴⁸ Electoral College Box Scores, available in <<http://www.nara.gov/fedreg/elctcoll/ec-boxsc.html>>. (President Lyndon Johnson won reelection over Republican Barry Goldwater in 1964 by an electoral vote margin of 486-52).

¹⁴⁹ *Id.* (President Ronald Reagan won reelection over Democrat Walter Mondale in 1984 by an electoral vote margin of 525-13).

1988.¹⁵⁰ Amazingly, these three Presidential terms resulted in the longest confirmation delays of their times. Lyndon Johnson's nominees, highlighted by the confirmation of the Court's first African-American Justice, averaged a confirmation time of 46 days – a sharp contrast to the 8 day confirmation of John F. Kennedy's lone nominee and the 17.31 day average confirmation time prior to 1961. Ronald Reagan's second-term nominations were confirmed in an average of 79.67 days and George H.W. Bush's nominees took a record average 84 days to confirm.

Perplexingly, Presidents elected in close elections were able to get their nominees confirmed in much less time than their counterparts elected by larger margins. As mentioned, John F. Kennedy's¹⁵¹ nomination of Justice Byron White was confirmed in just 8 days. Richard M. Nixon's¹⁵² nominees were confirmed in just 34.5 days (compared to the 46 day mark of his immediate predecessor, Lyndon Johnson). Even the controversial presidency of Bill Clinton¹⁵³ resulted in quicker Supreme Court confirmations than either of his Republican predecessors.

Thus, a strange paradox exists regarding Presidential popularity and Supreme Court confirmations. The more popular a President (from an electoral standpoint), the more difficulty he will apparently experience in confirming his Supreme Court nominees. This paradox must be applied in the context of the other factors analyzed here. For example, the premise did not hold true during the tenure of Franklin Roosevelt, due in

¹⁵⁰ *Id.* (Vice President George H.W. Bush was elected over Democrat Michael Dukakis in 1988 by an electoral vote margin of 426-111).

¹⁵¹ *Id.* (Senator John F. Kennedy defeated Vice President Richard M. Nixon in 1960 by an electoral vote margin of 303-219 and a margin of victory in the popular vote of less than one half of one percent).

¹⁵² *Id.* (Richard M. Nixon prevailed in 1968 over Democrat Hubert H. Humphrey by an electoral vote margin of 301-191 while failing to receive more than 50% of the popular vote).

¹⁵³ *Id.* (Bill Clinton defeated President George H.W. Bush in 1992 by an electoral vote margin of 370-168 while collecting a smaller percentage of the popular vote than any other victorious Presidential candidate).

large part to the overwhelming control his party enjoyed in the Senate throughout most of his twelve years in office.

Conclusion

The political discourse, Senatorial inaction, and statistical evidence yield an abundantly clear result – judicial nominations are being confirmed at a slower pace than at any time in our nation’s history. But who (or what political party) is to blame? The results of political and statistical analysis show that both parties are to blame for these increased delays. The Senatorial gridlock resulting from the 2000 elections probably insured that this problem will get worse before it gets any better.

From a political standpoint, there are delays whenever the President and the Senate majority are from different parties. In the last twenty years, the delays have worsened due to the appointment of either extremely conservative or liberal judges, i.e., conservative nominations by Republican Presidents to a Democratic Senate or liberal nominations by a Democratic President to a Republican Senate.

From a statistical standpoint, there are demographic or political traits that hasten or delay confirmation. In the tables below, profiles are displayed for the nominees that could expect to be confirmed most rapidly and most slowly for each of the three judicial levels analyzed in this article.

Supreme Court	Rapid Confirmation	Delayed Confirmation
Gender	Male	Female
Age	40 & Under	56-60
Ethnic Origin	Caucasian	African-American
Law School	Ranked 11-25	Fourth Tier
Undergraduate College	Ranked 26-50	Top 10
Presidential Party	Republican	Republican
Senate Party	Republican	Democrat
Year of President’s Term	First	Third

Circuit Court	Rapid Confirmation	Delayed Confirmation
Gender	Male	Female
Age	40 & Under	Over 60
Ethnic Origin	Caucasian	Hispanic
Law School	Ranked 26-50	Top 10
Undergraduate College	Second Tier	Fourth Tier
Federal Circuit	First	Ninth
Presidential Party	Republican	Democrat
Senate Party	Republican	Republican
Senate Leadership ¹⁵⁴	Majority Leader	Minority Whip
Year of President's Term	First	Fourth

District Court	Rapid Confirmation	Delayed Confirmation
Gender	Male	Female
Age	40 & Under	46-50
Ethnic Origin	Caucasian	Asian-American
Law School	Ranked 26-50	Top 10
Undergraduate College	Ranked 26-50	Fourth Tier
Federal Circuit	First	Sixth
Presidential Party	Republican	Democrat
Senate Party	Republican	Republican
Senate Leadership	Minority Whip	Minority Leader
Year of President's Term	First	Fourth

The warning calls issued by President George W. Bush, Congressional leaders and Chief Justice Rehnquist are not mere political demagoguery – the judicial confirmation process is in a state of crisis. There are several potential solutions. One such solution involves dispensing with the requirement that a nominee be nominated and confirmed in the same session of Congress. While that might actually extend some delays, it would eliminate the need for re-nomination of those whose nominations expired with a Congressional term. Numerous complications from such a solution can be foreseen, particularly when an election results in a shift of party control in either the

¹⁵⁴ This category represents the judicial circuit that is the home of the designated Senate leader. For example, if this category read “Majority Leader”, then it would be beneficial (or detrimental, depending on the column) to be from the home circuit of the leadership role mentioned.

Senate or the White House. Elimination of “holds” and the “blue slip” procedures would also improve the process but would be unlikely to be adopted by the a Senate unwilling to forfeit powers already assumed.

Another potential solution could be achieved with a mere changing of Senate rules regarding confirmations. Instead of requiring specific confirmation of nominees, the confirmation process could be revised so that a supermajority of Senators would be required to reject a Presidential nomination. Unless such a supermajority rejected the nominee in a timely manner, the nomination would be automatically confirmed after a designated period (120 days, for example). This proposed solution is not likely to be accepted, however, since it greatly diminishes minority influence in the Senate and cedes too much power, perhaps, to the Executive Branch.

Yet another proposed solution would result in a diminishment of Executive power. Involvement of the Senate at the inception of the nomination process would almost certainly expedite confirmations, but at the expense of exposing the nomination process to greater political pressure prior to nomination and the aforementioned reduction of presidential power.

President George W. Bush’s proposal, while noteworthy for its intent and bipartisan spirit, is unlikely to reduce confirmation gridlock. Its primary weakness is that it is merely aspirational; there is nothing in his proposal that *requires* the Senate to act promptly. Moreover, even if such requirements were part of the plan and Constitutional, Senate leaders from parties not in possession of the White House could still simply reject nominees and force the President to submit them again until appropriate dealing has been completed.

Any proposed solution to the ever-increasing problem of judicial confirmation delays is destined to be blocked by the very political forces that create the current delays. Unless partisan politics can be controlled or the confirmation procedure modified, it is foreseeable that the ongoing confirmation delays will only worsen in the years to come unless, of course, the same party controls both the Senate and the Presidency.

Federal Judiciary Analysis

Table 1 - Gender/Age/Ethnic
Confirmation Days
Supreme Court Justices

	---GENDER---			-----AGE AT CONFIRMATION-----						-----ETHNIC ORIGIN-----				
	TOTAL	Male	Female	Under 40	41-45	46-50	51-55	56-60	Over 60	Cauc	Afr Amer	Hisp	Asian Amer	Native Amer
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)
	110	108	2	5	12	16	27	33	17	108	2	-	-	-
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0			
30 Days & Under	83	83	-	5	9	15	18	23	13	83	-	-	-	-
	75.5%	76.9%		100.0%	75.0%	93.8%	66.7%	69.7%	76.5%	76.9%				
		C		GH		GH				K				
31-60 Days	11	9	2	-	1	1	3	3	3	11	-	-	-	-
	10.0%	8.3%	100.0%		8.3%	6.2%	11.1%	9.1%	17.6%	10.2%				
			B							K				
61-90 Days	12	12	-	-	-	-	6	5	1	11	1	-	-	-
	10.9%	11.1%					22.2%	15.2%	5.9%	10.2%	50.0%			
		C					DEF	DEF						
91-120 Days	3	3	-	-	2	-	-	1	-	2	1	-	-	-
	2.7%	2.8%			16.7%			3.0%		1.9%	50.0%			
121-150 Days	1	1	-	-	-	-	-	1	-	1	-	-	-	-
	0.9%	0.9%						3.0%		0.9%				
151-180 Days	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Over 180 Days	-	-	-	-	-	-	-	-	-	-	-	-	-	-
MEAN	22.17	21.89	37.50	4.60	24.25	11.50	25.04	28.09	19.88	20.94	88.50	-	-	-

Comparison Groups: BC/DEFGHI/JKLMN

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 2 - Law School Ranking
Confirmation Days
Supreme Court Justices

	TOTAL	Top 10	11-25	26-50	2nd Tier	3rd Tier	4th Tier	Other
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
	110	38	3	4	-	3	1	61
	100.0	100.0	100.0	100.0		100.0	100.0	100.0
30 Days & Under	83	24	3	4	-	2	-	50
	75.5%	63.2%	100.0%	100.0%		66.7%		82.0%
		G	BH	BH		G		G
31-60 Days	11	5	-	-	-	-	-	6
	10.0%	13.2%						9.8%
		CDFG						CDFG
61-90 Days	12	6	-	-	-	1	1	4
	10.9%	15.8%				33.3%	100.0%	6.6%
		CD					BFH	
91-120 Days	3	2	-	-	-	-	-	1
	2.7%	5.3%						1.6%
121-150 Days	1	1	-	-	-	-	-	-
	0.9%	2.6%						
151-180 Days	-	-	-	-	-	-	-	-
Over 180 Days	-	-	-	-	-	-	-	-
MEAN	22.17	32.05	15.33	9.00	-	34.67	78.00	15.69

Comparison Groups: BCDEFGH

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 4 - College Ranking
Confirmation Days
Supreme Court Justices

	TOTAL	Top 10	11-25	26-50	2nd Tier	3rd Tier	4th Tier	Other
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
	110	35	10	4	4	-	1	56
	100.0	100.0	100.0	100.0	100.0		100.0	100.0
30 Days & Under	83	25	7	4	3	-	1	43
	75.5%	71.4%	70.0%	100.0% BH	75.0%		100.0% BH	76.8%
31-60 Days	11	3	2	-	1	-	-	5
	10.0%	8.6%	20.0%		25.0%			8.9% DG
61-90 Days	12	6	1	-	-	-	-	5
	10.9%	17.1% DEG	10.0%					8.9% DEG
91-120 Days	3	1	-	-	-	-	-	2
	2.7%	2.9%						3.6%
121-150 Days	1	-	-	-	-	-	-	1
	0.9%							1.8%
151-180 Days	-	-	-	-	-	-	-	-
Over 180 Days	-	-	-	-	-	-	-	-
MEAN	22.17	23.83	21.80	11.75	18.50	-	8.00	22.46

Comparison Groups: BCDEFGH

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 6 - Congress Since 1789
Confirmation Days
Supreme Court Justices

	CONGRESS											
	1789- 1808	1809- 1828	1829- 1848	1849- 1868	1869- 1888	1889- 1908	1909- 1928	1929- 1948	1949- 1968	1969- 1988	1989- Present	
	TOTAL	1st- 10th	11th- 20th	21st- 30th	31st- 40th	41st- 50th	51st- 60th	61st- 70th	71st- 80th	81st- 90th	91st- 100th	101st- 110th
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
30 Days & Under	110	15	4	10	8	11	10	13	15	10	9	6
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	83	14	3	8	7	6	9	12	15	5	3	1
	75.5%	93.3% FJKL	75.0%	80.0% L	87.5% KL	54.5%	90.0% KL	92.3% JKL	100.0% FJKL	50.0%	33.3%	16.7%
31-60 Days	11	-	-	-	1	4	1	-	-	1	3	1
	10.0%				12.5%	36.4% BCDHI	10.0%			10.0%	33.3%	16.7%
61-90 Days	12	1	-	2	-	1	-	-	-	3	3	3
	10.9%	6.7%		20.0%		9.1%				30.0%	33.3%	50.0% CEGHI
91-120 Days	3	-	1	-	-	-	-	-	-	1	-	1
	2.7%		25.0%							10.0%		16.7%
121-150 Days	1	-	-	-	-	-	-	1	-	-	-	-
	0.9%							7.7%				
151-180 Days	-	-	-	-	-	-	-	-	-	-	-	-
Over 180 Days	-	-	-	-	-	-	-	-	-	-	-	-
MEAN	22.17	7.93	32.25	19.50	7.38	27.64	10.00	16.08	11.47	43.80	47.67	58.33

Comparison Groups: BCDEFGHIJKL

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 7 - Political Party - President/Senate
Confirmation Days
Supreme Court Justices

	-----DEMOCRATIC PRESIDENT-----				-----REPUBLICAN PRESIDENT-----			-----OTHER PARTY PRESIDENT-----		
	TOTAL	SENATE			Democrat	Republican	Other	Democrat	Republican	Other
		Democrat	Republican	Other						
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
30 Days & Under	110	28	3	15	14	37	15	2	7	19
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	83	23	1	11	6	29	11	2	7	15
	75.5%	82.1%	33.3%	73.3%	42.9%	78.4%	73.3%	100.0%	100.0%	78.9%
31-60 Days		E				E		BCDEFG	BCDEFG	
	11	2	1	-	2	6	-	-	-	-
	10.0%	7.1%	33.3%		14.3%	16.2%				
						DGHIJ				
61-90 Days	12	2	1	3	4	2	3	-	-	3
	10.9%	7.1%	33.3%	20.0%	28.6%	5.4%	20.0%			15.8%
					HI					
	91-120 Days	3	-	-	1	2	-	1	-	1
121-150 Days	2.7%			6.7%	14.3%		6.7%			5.3%
	1	1	-	-	-	-	-	-	-	-
	0.9%	3.6%								
	151-180 Days	-	-	-	-	-	-	-	-	-
Over 180 Days	-	-	-	-	-	-	-	-	-	-
MEAN	22.17	21.14	42.67	25.73	47.57	16.70	25.73	9.50	3.00	20.79

Comparison Groups: BCDEFGHIJ

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 8 - Year of President's Term
Confirmation Days
Supreme Court Justices

	-----TERM YEAR-----				
	TOTAL	1st	2nd	3rd	4th
	-----	-----	-----	-----	-----
	(A)	(B)	(C)	(D)	(E)
	110	28	38	22	22
	100.0	100.0	100.0	100.0	100.0
30 Days & Under	83	23	30	14	16
	75.5%	82.1%	78.9%	63.6%	72.7%
31-60 Days	11	4	4	2	1
	10.0%	14.3%	10.5%	9.1%	4.5%
61-90 Days	12	1	4	3	4
	10.9%	3.6%	10.5%	13.6%	18.2%
91-120 Days	3	-	-	3	-
	2.7%			13.6%	
121-150 Days	1	-	-	-	1
	0.9%				4.5%
151-180 Days	-	-	-	-	-
Over 180 Days	-	-	-	-	-
MEAN	22.17	14.75	18.21	33.86	26.77

Comparison Groups: BCDE

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 9 - Presidential Term
Confirmation Days
Supreme Court Justices

	-----PRESIDENTIAL TERM-----													
	TOTAL	Before 1961	Kennedy	Johnson 1st	Johnson 2nd	Nixon 1st	Nixon 2nd	Ford	Carter	Reagan 1st	Reagan 2nd	GHW Bush	Clinton 1st	Clinton 2nd
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)
	110 100.0	94 100.0	1 100.0	-	2 100.0	4 100.0	-	1 100.0	-	1 100.0	3 100.0	2 100.0	2 100.0	-
30 Days & Under	83 75.5%	78 83.0%	1 100.0%	-	1 50.0%	2 50.0%	-	1 100.0%	-	-	-	-	-	-
		JKLM	B					B						
31-60 Days	11 10.0%	7 7.4%	-	-	-	2 50.0%	-	-	-	1 100.0%	-	-	1 50.0%	-
		CEHKL								B				
61-90 Days	12 10.9%	6 6.4%	-	-	1 50.0%	-	-	-	-	-	3 100.0%	1 50.0%	1 50.0%	-
		CFHJ								B				
91-120 Days	3 2.7%	2 2.1%	-	-	-	-	-	-	-	-	-	1 50.0%	-	-
121-150 Days	1 0.9%	1 1.1%	-	-	-	-	-	-	-	-	-	-	-	-
151-180 Days	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Over 180 Days	-	-	-	-	-	-	-	-	-	-	-	-	-	-
MEAN	22.17	17.31	8.00	-	46.00	34.50	-	19.00	-	33.00	79.67	84.00	57.50	-

Comparison Groups: BCDEFGHIJKLMN

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 10 - Gender/Age/Ethnic
Confirmation Days
Circuit Court Judges

	---GENDER---			-----AGE AT CONFIRMATION-----						-----ETHNIC ORIGIN-----				
	TOTAL	Male	Female	Under 40	41-45	46-50	51-55	56-60	Over 60	Cauc	Afr Amer	Hisp	Asian Amer	Native Amer
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)
	362	317	45	16	42	96	93	77	38	324	23	12	3	-
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	-
60 & Under	192	180	12	9	22	51	50	42	18	179	10	1	2	-
	53.0%	56.8%	26.7%	56.2%	52.4%	53.1%	53.8%	54.5%	47.4%	55.2%	43.5%	8.3%	66.7%	-
		C								L	L			
61-120 Days	109	90	19	4	11	28	30	25	11	94	8	7	-	-
	30.1%	28.4%	42.2%	25.0%	26.2%	29.2%	32.3%	32.5%	28.9%	29.0%	34.8%	58.3%		
										M	M	M		
121-180 Days	29	23	6	2	5	9	4	5	4	26	3	-	-	-
	8.0%	7.3%	13.3%	12.5%	11.9%	9.4%	4.3%	6.5%	10.5%	8.0%	13.0%			
										LM				
181-240 Days	19	15	4	1	3	5	4	4	2	16	2	1	-	-
	5.2%	4.7%	8.9%	6.2%	7.1%	5.2%	4.3%	5.2%	5.3%	4.9%	8.7%	8.3%		
										M				
241-300 Days	5	4	1	-	-	2	1	1	1	4	-	-	1	-
	1.4%	1.3%	2.2%			2.1%	1.1%	1.3%	2.6%	1.2%			33.3%	
301-365 Days	2	2	-	-	-	-	1	-	1	1	-	1	-	-
	0.6%	0.6%					1.1%		2.6%	0.3%		8.3%		
Over 1 Year	6	3	3	-	1	1	3	-	1	4	-	2	-	-
	1.7%	0.9%	6.7%		2.4%	1.0%	3.2%		2.6%	1.2%		16.7%		
MEAN	75.70	69.69	118.04	63.44	81.62	73.92	81.02	64.73	88.08	71.45	83.09	168.25	108.00	-

Comparison Groups: BC/DEFGHI/JKLMN

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 11 - Law School Ranking
Confirmation Days
Circuit Court Judges

	TOTAL	Top 10	11-25	26-50	2nd Tier	3rd Tier	4th Tier	Other
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
	362	155	62	50	43	32	11	9
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
60 & Under	192	77	35	22	24	20	6	8
	53.0%	49.7%	56.5%	44.0%	55.8%	62.5%	54.5%	88.9% BCDE
61-120 Days	109	44	18	23	14	6	3	1
	30.1%	28.4%	29.0%	46.0% FH	32.6%	18.8%	27.3%	11.1%
121-180 Days	29	15	4	5	2	2	1	-
	8.0%	9.7% H	6.5%	10.0% H	4.7%	6.2%	9.1%	-
181-240 Days	19	11	4	-	1	2	1	-
	5.2%	7.1% DH	6.5%	-	2.3%	6.2%	9.1%	-
241-300 Days	5	3	-	-	1	1	-	-
	1.4%	1.9%	-	-	2.3%	3.1%	-	-
301-365 Days	2	-	-	-	1	1	-	-
	0.6%	-	-	-	2.3%	3.1%	-	-
Over 1 Year	6	5	1	-	-	-	-	-
	1.7%	3.2%	1.6%	-	-	-	-	-
MEAN	75.70	88.10	68.52	63.82	66.51	73.34	75.73	30.11

Comparison Groups: BCDEFGH

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 13 - College Ranking
Confirmation Days
Circuit Court Judges

	TOTAL	Top 10	11-25	26-50	2nd Tier	3rd Tier	4th Tier	Other
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
	362	79	36	29	54	30	8	126
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
60 & Under	192	42	16	11	31	14	4	74
	53.0%	53.2%	44.4%	37.9%	57.4%	46.7%	50.0%	58.7%
61-120 Days	109	25	8	12	18	10	1	35
	30.1%	31.6%	22.2%	41.4%	33.3%	33.3%	12.5%	27.8%
121-180 Days	29	6	7	3	3	2	-	8
	8.0%	7.6% G	19.4% G	10.3%	5.6%	6.7%		6.3% G
181-240 Days	19	1	4	3	1	3	-	7
	5.2%	1.3%	11.1%	10.3%	1.9%	10.0%		5.6% G
241-300 Days	5	2	1	-	-	-	1	1
	1.4%	2.5%	2.8%				12.5%	0.8%
301-365 Days	2	-	-	-	-	-	2	-
	0.6%						25.0%	
Over 1 Year	6	3	-	-	1	1	-	1
	1.7%	3.8%			1.9%	3.3%		0.8%
MEAN	75.70	80.11	89.33	81.90	66.13	83.43	146.88	65.37

Comparison Groups: BCDEFGH

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 15 - Federal Circuit
Confirmation Days
Circuit Court Judges

	FEDERAL CIRCUIT													
	TOTAL	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	DC	Fed
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)
60 & Under	362	13	33	32	25	50	34	24	24	57	20	10	26	14
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	192	6	18	17	15	30	18	17	17	21	11	3	13	6
	53.0%	46.2%	54.5%	53.1%	60.0%	60.0%	52.9%	70.8%	70.8%	36.8%	55.0%	30.0%	50.0%	42.9%
61-120 Days						J		JL	JL					
	109	6	8	9	7	16	11	5	3	19	6	4	11	4
	30.1%	46.2%	24.2%	28.1%	28.0%	32.0%	32.4%	20.8%	12.5%	33.3%	30.0%	40.0%	42.3%	28.6%
													I	
121-180 Days	29	1	2	4	2	3	3	2	1	5	2	1	1	2
	8.0%	7.7%	6.1%	12.5%	8.0%	6.0%	8.8%	8.3%	4.2%	8.8%	10.0%	10.0%	3.8%	14.3%
181-240 Days	19	-	4	-	1	-	2	-	2	5	1	2	1	1
	5.2%		12.1%		4.0%		5.9%		8.3%	8.8%	5.0%	20.0%	3.8%	7.1%
241-300 Days										BDFH				
	5	-	-	1	-	1	-	-	-	3	-	-	-	-
	1.4%			3.1%		2.0%				5.3%				
301-365 Days	2	-	-	1	-	-	-	-	1	-	-	-	-	-
	0.6%			3.1%					4.2%					
Over 1 Year	6	-	1	-	-	-	-	-	-	4	-	-	-	1
	1.7%		3.0%							7.0%				7.1%
MEAN	75.70	54.31	87.27	71.03	54.08	56.28	73.56	47.88	64.83	116.81	61.50	108.20	63.04	111.79

Comparison Groups: BCDEFGHIJKLMN

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 16 - Congress 1961-1984
Confirmation Days
Circuit Court Judges

	TOTAL	CONGRESS											
		1961-62 87th	1963-64 88th	1965-66 89th	1967-68 90th	1969-70 91st	1971-72 92nd	1973-74 93rd	1975-76 94th	1977-78 95th	1979-80 96th	1981-82 97th	1983-84 98th
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)
	362 100.0	17 100.0	7 100.0	25 100.0	12 100.0	20 100.0	17 100.0	10 100.0	9 100.0	12 100.0	44 100.0	19 100.0	14 100.0
60 & Under	192 53.0%	16 94.1% K	5 71.4% K	24 96.0% FKM	9 75.0% K	14 70.0% K	14 82.4% K	10 100.0% FKM	7 77.8% K	11 91.7% K	12 27.3%	16 84.2% K	9 64.3% K
61-120 Days	109 30.1%	-	2 28.6%	1 4.0%	2 16.7%	5 25.0% BH	3 17.6%	-	2 22.2%	1 8.3%	26 59.1% EFGHIJL BD	3 15.8%	4 28.6% BH
121-180 Days	29 8.0%	-	-	-	1 8.3%	1 5.0%	-	-	-	-	4 9.1%	-	-
181-240 Days	19 5.2%	1 5.9%	-	-	-	-	-	-	-	-	1 2.3%	-	1 7.1%
241-300 Days	5 1.4%	-	-	-	-	-	-	-	-	-	1 2.3%	-	-
301-365 Days	2 0.6%	-	-	-	-	-	-	-	-	-	-	-	-
Over 1 Year	6 1.7%	-	-	-	-	-	-	-	-	-	-	-	-
MEAN	75.70	30.88	45.71	26.20	45.08	40.50	28.65	19.60	36.56	32.58	82.43	34.05	46.21

Comparison Groups: BCDEFGHIJKLM

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 17 - Congress Since 1985
Confirmation Days
Circuit Court Judges

	-----CONGRESS-----								
	TOTAL	1985-1986 99th	1987-1988 100th	1989-1990 101st	1991-1992 102nd	1993-1994 103rd	1995-1996 104th	1997-1998 105th	1999-2000 106th
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
	362	33	16	22	20	19	11	20	15
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
60 & Under	192	23	4	6	6	2	2	1	1
	53.0%	69.7% CDEFGHI	25.0%	27.3%	30.0%	10.5%	18.2%	5.0%	6.7%
61-120 Days	109	8	4	15	6	12	5	7	3
	30.1%	24.2%	25.0%	68.2% BCEI	30.0%	63.2% BCI	45.5%	35.0%	20.0%
121-180 Days	29	2	5	1	5	4	2	1	3
	8.0%	6.1%	31.2%	4.5%	25.0%	21.1%	18.2%	5.0%	20.0%
181-240 Days	19	-	3	-	3	1	-	7	2
	5.2%		18.8%		15.0%	5.3%		35.0% BDFG	13.3%
241-300 Days	5	-	-	-	-	-	2	1	1
	1.4%						18.2%	5.0%	6.7%
301-365 Days	2	-	-	-	-	-	-	-	2
	0.6%								13.3%
Over 1 Year	6	-	-	-	-	-	-	3	3
	1.7%							15.0%	20.0%
MEAN	75.70	49.61	118.81	77.77	107.35	103.16	125.18	204.70	226.87

Comparison Groups: BCDEFGHI

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 18 - Political Party - President/Senate
Confirmation Days
Circuit Court Judges

	-----DEMOCRATIC PRESIDENT-----				-----REPUBLICAN PRESIDENT-----			-----SENATE LEADERSHIP-----			
	TOTAL	Democrat	Republican	-----SENATE-----			Majority Leader	Majority Whip	Minority Leader	Minority Whip	
				Other	Democrat	Republican					Other
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)
60 & Under	362	136	46	-	114	66	-	33	46	27	47
	100.0	100.0	100.0		100.0	100.0		100.0	100.0	100.0	100.0
61-120 Days	192	79	4	-	61	48	-	20	25	11	20
	53.0%	58.1%	8.7%		53.5%	72.7%		60.6%	54.3%	40.7%	42.6%
		C			C	CE					
121-180 Days	109	44	15	-	35	15	-	11	16	8	13
	30.1%	32.4%	32.6%		30.7%	22.7%		33.3%	34.8%	29.6%	27.7%
181-240 Days	29	9	6	-	12	2	-	2	2	3	6
	8.0%	6.6%	13.0%		10.5%	3.0%		6.1%	4.3%	11.1%	12.8%
241-300 Days	19	3	9	-	6	1	-	-	1	4	4
	5.2%	2.2%	19.6%		5.3%	1.5%			2.2%	14.8%	8.5%
			BF								
301-365 Days	5	1	4	-	-	-	-	-	2	-	2
	1.4%	0.7%	8.7%						4.3%		4.3%
Over 1 Year	2	-	2	-	-	-	-	-	-	1	-
	0.6%		4.3%							3.7%	
MEAN	6	-	6	-	-	-	-	-	-	-	2
	1.7%		13.0%								4.3%
			BEF								

Comparison Groups: BCDEFG/HIJK

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 19 - Year of President's Term
Confirmation Days
Circuit Court Judges

	-----TERM YEAR-----				
	TOTAL	1st	2nd	3rd	4th
	-----	-----	-----	-----	-----
	(A)	(B)	(C)	(D)	(E)
	362	91	106	98	67
	100.0	100.0	100.0	100.0	100.0
60 & Under	192	64	59	41	28
	53.0%	70.3%	55.7%	41.8%	41.8%
		DE			
61-120 Days	109	22	30	40	17
	30.1%	24.2%	28.3%	40.8%	25.4%
				B	
121-180 Days	29	2	7	12	8
	8.0%	2.2%	6.6%	12.2%	11.9%
				B	
181-240 Days	19	2	7	3	7
	5.2%	2.2%	6.6%	3.1%	10.4%
241-300 Days	5	1	-	2	2
	1.4%	1.1%		2.0%	3.0%
301-365 Days	2	-	-	-	2
	0.6%				3.0%
Over 1 Year	6	-	3	-	3
	1.7%		2.8%		4.5%
MEAN	75.70	46.41	79.27	77.40	107.37

Comparison Groups: BCDE

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 20 - Presidential Term
Confirmation Days
Circuit Court Judges

	PRESIDENTIAL TERM												
	TOTAL	Kennedy	Johnson 1st	Johnson 2nd	Nixon 1st	Nixon 2nd	Ford	Carter	Reagan 1st	Reagan 2nd	GHW Bush	Clinton 1st	Clinton 2nd
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)
60 & Under	362	20	4	37	37	8	11	56	33	49	42	30	35
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	192	19	2	33	28	8	9	23	25	27	12	4	2
61-120 Days	53.0%	95.0%	50.0%	89.2%	75.7%	100.0%	81.8%	41.1%	75.8%	55.1%	28.6%	13.3%	5.7%
		HJKLM		HJKLM	HKLM	EH IJKLM	HKLM	LM	HKLM	KLM	M		
	109	-	2	3	8	-	2	27	7	12	21	17	10
121-180 Days	30.1%		50.0%	8.1%	21.6%		18.2%	48.2%	21.2%	24.5%	50.0%	56.7%	28.6%
					BF			BDEFIJ	BF	BF	BDEFIJ	DEFGIJM B	BF
	29	-	-	1	1	-	-	4	-	7	6	6	4
181-240 Days	8.0%			2.7%	2.7%			7.1%		14.3%	14.3%	20.0%	11.4%
										BCFGI	BCFGI	BCFGI	
	19	1	-	-	-	-	-	1	1	3	3	1	9
241-300 Days	5.2%	5.0%						1.8%	3.0%	6.1%	7.1%	3.3%	25.7%
													EFGHIJL BCD
	5	-	-	-	-	-	-	1	-	-	-	2	2
301-365 Days	1.4%							1.8%				6.7%	5.7%
	2	-	-	-	-	-	-	-	-	-	-	-	2
	0.6%												5.7%
Over 1 Year													
	6	-	-	-	-	-	-	-	-	-	-	-	6
	1.7%												17.1%
MEAN													FGHIJKL BCDE
	75.70	31.45	54.00	32.32	35.05	22.38	31.45	71.75	39.21	72.20	91.86	111.23	214.20

Comparison Groups: BCDEFGHIJKLM

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 21 - Gender/Age/Ethnic
Confirmation Days
District Court Judges

	---GENDER---			-----AGE AT CONFIRMATION-----						-----ETHNIC ORIGIN-----				
	TOTAL	Male	Female	Under 40	41-45	46-50	51-55	56-60	Over 60	Cauc	Afr Amer	Hisp	Asian Amer	Native Amer
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)
	614	484	130	48	142	160	136	95	33	510	68	30	5	1
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
60 & Under	211	174	37	28	49	35	45	36	18	182	24	5	-	-
	34.4%	36.0%	28.5%	58.3% EFGH	34.5% F	21.9%	33.1%	37.9% F	54.5% F	35.7% LMN	35.3% MN	16.7% MN		
61-120 Days	223	175	48	10	56	61	52	36	8	181	25	14	2	1
	36.3%	36.2%	36.9%	20.8%	39.4% D	38.1% D	38.2% D	37.9%	24.2%	35.5%	36.8%	46.7%	40.0%	100.0% JKLM
121-180 Days	107	88	19	8	26	29	27	13	4	88	11	7	1	-
	17.4%	18.2%	14.6%	16.7%	18.3%	18.1%	19.9%	13.7%	12.1%	17.3% N	16.2% N	23.3% N	20.0%	
181-240 Days	43	33	10	1	9	18	7	5	3	36	4	2	1	-
	7.0%	6.8%	7.7%	2.1%	6.3%	11.2% D	5.1%	5.3%	9.1%	7.1% N	5.9%	6.7%	20.0%	
241-300 Days	14	8	6	1	1	6	4	2	-	13	-	1	-	-
	2.3%	1.7%	4.6%	2.1%	0.7%	3.8% I	2.9%	2.1%		2.5% KMN		3.3%		
301-365 Days	9	2	7	-	1	5	1	2	-	6	2	1	-	-
	1.5%	0.4%	5.4% B		0.7%	3.1%	0.7%	2.1%		1.2% MN	2.9%	3.3%		
Over 1 Year	7	4	3	-	-	6	-	1	-	4	2	-	1	-
	1.1%	0.8%	2.3%			3.8% DEGI		1.1%		0.8%	2.9%		20.0%	
MEAN	101.36	96.27	120.30	74.42	91.62	129.61	96.07	97.63	78.06	99.42	101.99	114.70	213.20	91.00

Comparison Groups: BC/DEFGHI/JKLMN

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 22 - Law School Ranking
Confirmation Days
District Court Judges

	TOTAL	Top 10	11-25	26-50	2nd Tier	3rd Tier	4th Tier	Other
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
	614	164	106	91	137	78	32	6
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
60 & Under	211	46	40	37	49	25	13	1
	34.4%	28.0%	37.7%	40.7%	35.8%	32.1%	40.6%	16.7%
61-120 Days	223	69	36	24	50	29	10	5
	36.3%	42.1%	34.0%	26.4%	36.5%	37.2%	31.2%	83.3%
		D						BCDEFG
121-180 Days	107	27	18	27	20	11	4	-
	17.4%	16.5%	17.0%	29.7%	14.6%	14.1%	12.5%	
		H	H	BEFH	H	H		
181-240 Days	43	11	9	3	10	7	3	-
	7.0%	6.7%	8.5%	3.3%	7.3%	9.0%	9.4%	
		H	H		H	H		
241-300 Days	14	5	1	-	4	3	1	-
	2.3%	3.0%	0.9%		2.9%	3.8%	3.1%	
301-365 Days	9	3	1	-	3	2	-	-
	1.5%	1.8%	0.9%		2.2%	2.6%		
Over 1 Year	7	3	1	-	1	1	1	-
	1.1%	1.8%	0.9%		0.7%	1.3%	3.1%	
MEAN	101.36	108.18	99.47	89.21	101.28	107.31	97.72	76.50

Comparison Groups: BCDEFGH

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 24 - College Ranking
Confirmation Days
District Court Judges

	TOTAL	Top 10	11-25	26-50	2nd Tier	3rd Tier	4th Tier	Other
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
	614	89	60	44	122	54	23	222
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
60 & Under	211	27	16	20	47	15	8	78
	34.4%	30.3%	26.7%	45.5%	38.5%	27.8%	34.8%	35.1%
61-120 Days	223	32	24	14	45	22	5	81
	36.3%	36.0%	40.0%	31.8%	36.9%	40.7%	21.7%	36.5%
121-180 Days	107	19	12	5	19	11	3	38
	17.4%	21.3%	20.0%	11.4%	15.6%	20.4%	13.0%	17.1%
181-240 Days	43	7	5	4	6	2	4	15
	7.0%	7.9%	8.3%	9.1%	4.9%	3.7%	17.4%	6.8%
241-300 Days	14	3	2	1	2	1	3	2
	2.3%	3.4%	3.3%	2.3%	1.6%	1.9%	13.0%	0.9%
301-365 Days	9	1	1	-	1	1	-	5
	1.5%	1.1%	1.7%		0.8%	1.9%		2.3%
Over 1 Year	7	-	-	-	2	2	-	3
	1.1%				1.6%	3.7%		1.4%
MEAN	101.36	104.13	109.55	88.39	96.54	110.74	119.39	99.11

Comparison Groups: BCDEFGH

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 26 - Federal Circuit
Confirmation Days
District Court Judges

	-----FEDERAL CIRCUIT-----													
	TOTAL	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	DC	Fed
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)
	614	25	72	58	47	61	58	44	45	100	32	59	13	-
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	
60 & Under	211	14	23	17	15	18	19	15	18	30	13	27	2	-
	34.4%	56.0%	31.9%	29.3%	31.9%	29.5%	32.8%	34.1%	40.0%	30.0%	40.6%	45.8%	15.4%	
		JM										M		
61-120 Days	223	7	29	26	19	27	17	18	10	34	14	15	7	-
	36.3%	28.0%	40.3%	44.8%	40.4%	44.3%	29.3%	40.9%	22.2%	34.0%	43.8%	25.4%	53.8%	
				I		I								
121-180 Days	107	4	13	9	9	10	13	3	12	19	3	11	1	-
	17.4%	16.0%	18.1%	15.5%	19.1%	16.4%	22.4%	6.8%	26.7%	19.0%	9.4%	18.6%	7.7%	
							H		H					
181-240 Days	43	-	5	4	2	3	4	5	2	11	1	4	2	-
	7.0%		6.9%	6.9%	4.3%	4.9%	6.9%	11.4%	4.4%	11.0%	3.1%	6.8%	15.4%	
								B		B				
241-300 Days	14	-	2	-	-	-	2	2	3	2	1	1	1	-
	2.3%		2.8%				3.4%	4.5%	6.7%	2.0%	3.1%	1.7%	7.7%	
301-365 Days	9	-	-	2	-	2	2	1	-	1	-	1	-	-
	1.5%			3.4%		3.3%	3.4%	2.3%		1.0%		1.7%		
Over 1 Year	7	-	-	-	2	1	1	-	-	3	-	-	-	-
	1.1%				4.3%	1.6%	1.7%			3.0%				
MEAN	101.36	67.24	95.47	99.98	102.06	104.64	118.26	101.11	100.02	113.38	81.66	92.44	114.46	-

Comparison Groups: BCDEFGHIJKLMN

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 27 - Congress Since 1985
Confirmation Days
District Court Judges

	-----CONGRESS-----								
	TOTAL	1985-1986 99th	1987-1988 100th	1989-1990 101st	1991-1992 102nd	1993-1994 103rd	1995-1996 104th	1997-1998 105th	1999-2000 106th
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
	614	95	66	48	100	107	62	79	57
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
60 & Under	211	82	8	17	28	44	13	7	12
	34.4%	86.3% CDEFGHI	12.1%	35.4% CH	28.0% CH	41.1% CGHI	21.0%	8.9%	21.1%
61-120 Days	223	12	34	27	29	53	25	24	19
	36.3%	12.6%	51.5% BEH	56.2% BEHI	29.0% B	49.5% BEH	40.3% B	30.4% B	33.3% B
121-180 Days	107	-	16	3	30	9	14	22	13
	17.4%		24.2% BDF	6.2%	30.0% BDF	8.4% B	22.6% BDF	27.8% BDF	22.8% BDF
181-240 Days	43	-	5	1	9	-	7	13	8
	7.0%		7.6% BF	2.1%	9.0% BF		11.3% BF	16.5% BDF	14.0% BDF
241-300 Days	14	1	-	-	2	-	3	5	3
	2.3%	1.1%			2.0%		4.8%	6.3%	5.3%
301-365 Days	9	-	1	-	2	-	-	4	2
	1.5%		1.5%		2.0%			5.1%	3.5%
Over 1 Year	7	-	2	-	-	1	-	4	-
	1.1%		3.0%			0.9%		5.1%	
MEAN	101.36	42.74	120.59	76.79	112.04	76.37	112.27	161.05	131.07

Comparison Groups: BCDEFGHI

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 28 - Political Party - President/Senate
Confirmation Days
District Court Judges

	-----DEMOCRATIC PRESIDENT-----				-----REPUBLICAN PRESIDENT-----			-----SENATE LEADERSHIP-----			
	-----SENATE-----							Majority	Majority	Minority	Minority
	TOTAL	Democrat	Republican	Other	Democrat	Republican	Other	Leader	Whip	Leader	Whip
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)
	614	107	198	-	214	95	-	4	12	6	11
	100.0	100.0	100.0		100.0	100.0		100.0	100.0	100.0	100.0
60 & Under	211	44	32	-	53	82	-	2	7	1	9
	34.4%	41.1%	16.2%		24.8%	86.3%		50.0%	58.3%	16.7%	81.8%
		CE				BCE					J
61-120 Days	223	53	68	-	90	12	-	2	4	5	2
	36.3%	49.5%	34.3%		42.1%	12.6%		50.0%	33.3%	83.3%	18.2%
		CF	F		F					IK	
121-180 Days	107	9	49	-	49	-	-	-	1	-	-
	17.4%	8.4%	24.7%		22.9%				8.3%		
		F	BF		BF						
181-240 Days	43	-	28	-	15	-	-	-	-	-	-
	7.0%		14.1%		7.0%						
			BEF		BF						
241-300 Days	14	-	11	-	2	1	-	-	-	-	-
	2.3%		5.6%		0.9%	1.1%					
			BEF								
301-365 Days	9	-	6	-	3	-	-	-	-	-	-
	1.5%		3.0%		1.4%						
			BF								
Over 1 Year	7	1	4	-	2	-	-	-	-	-	-
	1.1%	0.9%	2.0%		0.9%						
MEAN	101.36	76.37	137.15	-	106.77	42.74	-	69.00	69.00	88.67	47.73

Comparison Groups: BCDEFG/HIJK

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 29 - Year of President's Term
Confirmation Days
District Court Judges

	-----TERM YEAR-----				
	TOTAL	1st	2nd	3rd	4th
	-----	-----	-----	-----	-----
	(A)	(B)	(C)	(D)	(E)
	614	126	204	148	136
	100.0	100.0	100.0	100.0	100.0
60 & Under	211	76	75	37	23
	34.4%	60.3%	36.8%	25.0%	16.9%
		CDE	DE		
61-120 Days	223	38	78	69	38
	36.3%	30.2%	38.2%	46.6%	27.9%
				BE	
121-180 Days	107	6	28	32	41
	17.4%	4.8%	13.7%	21.6%	30.1%
			B	B	BC
181-240 Days	43	2	12	9	20
	7.0%	1.6%	5.9%	6.1%	14.7%
					BCD
241-300 Days	14	3	3	1	7
	2.3%	2.4%	1.5%	0.7%	5.1%
301-365 Days	9	1	3	-	5
	1.5%	0.8%	1.5%		3.7%
Over 1 Year	7	-	5	-	2
	1.1%		2.5%		1.5%
MEAN	101.36	66.17	99.82	99.37	138.44

Comparison Groups: BCDE

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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Federal Judiciary Analysis

Table 30 - Presidential Term
Confirmation Days
District Court Judges

	-----PRESIDENTIAL TERM-----				
	TOTAL	Reagan 2nd	GHW Bush	Clinton 1st	Clinton 2nd
	(A)	(B)	(C)	(D)	(E)
	614	161	148	169	136
	100.0	100.0	100.0	100.0	100.0
60 & Under	211	90	45	57	19
	34.4%	55.9%	30.4%	33.7%	14.0%
		CDE	E	E	
61-120 Days	223	46	56	78	43
	36.3%	28.6%	37.8%	46.2%	31.6%
				BE	
121-180 Days	107	16	33	23	35
	17.4%	9.9%	22.3%	13.6%	25.7%
			B		BD
181-240 Days	43	5	10	7	21
	7.0%	3.1%	6.8%	4.1%	15.4%
					BCD
241-300 Days	14	1	2	3	8
	2.3%	0.6%	1.4%	1.8%	5.9%
					B
301-365 Days	9	1	2	-	6
	1.5%	0.6%	1.4%		4.4%
					D
Over 1 Year	7	2	-	1	4
	1.1%	1.2%		0.6%	2.9%
MEAN	101.36	74.65	100.61	89.54	148.49

Comparison Groups: BCDE

Independent Z-Test for Percentages

Upper case letters indicate significance at the 98% level.

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